

1 UNITED STATES DEPARTMENT OF AGRICULTURE
2 BEFORE THE SECRETARY OF AGRICULTURE

3 IN re: Docket #AO-F&V-991-A3; FV03-991-01
4 HOPS PRODUCERS FOR WASHINGTON, OREGON, IDAHO AND
5 CALIFORNIA
6

7 Hearing held on the 17th day of October, 2003
8 at 8:39 a.m.

9 Sheraton Portland Airport Hotel

10 8235 NE Airport Way

11 Portland, OR 97220
12

13 TRANSCRIPT OF PROCEEDINGS
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16 BEFORE: JILL S. CLIFTON
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York Stenographic Services, Inc.
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P R O C E E D I N G S

October 17, 2003

ADMINISTRATIVE LAW JUDGE: We're on record again. It's 8:39 in the morning. This is Friday, 17, October, 2003. This is day three of our Hops rule making hearing. This will be volume three of the transcript. The case caption is in re: Hops Produced in Washington, Oregon, Idaho, and California. The docket number is AO-F&V-991-A3;FVO3 -- that's 03-991-01.

I've asked the court reporting service, York, through the court reporter to have the same typist prepare all these three days of transcript so that I think it will insure a better-quality transcript.

The contract was for a turnaround time of 15 days, but because I've not allowed the court reporter to send any tapes yet and because I'm asking that the same typist prepare all three volumes, that time will be extended so that York will have a reasonable time to complete the typing of this first three days.

Those three days, of course, will be added to next week's five days before we actually have the document that will show all of the testimony.

I'd like to start with preliminary matters that anyone might like to raise at this time about

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1 scheduling and the like. Mr. Carswell.

2 MR. CARSWELL: Yes, Your Honor. I have
3 discussed this with other counsel here this morning and
4 have gotten their gracious cooperation, but I was
5 wondering if possible if -- and it may not be but wanted
6 to see if it was possible if we could end a couple hours
7 early today at three o'clock for scheduling reasons to
8 get back to St. Louis for an obligation that I have this
9 weekend. And if not, then, you know, we'll just go on
10 to 5:00, but just wanted to check.

11 ADMINISTRATIVE LAW JUDGE: My main concern is
12 that we finish by the end of next week. We certainly
13 may be able to move more quickly than we have this week,
14 because so much of what we did was just getting started.
15 We can expect, though, when we start in Yakima ought to
16 have some of the same logistics and hearing system
17 adjustments to be made.

18 But let me ask now what the position of
19 Proponent's group would be on our stopping the hearing
20 at 3:00 today.

21 MR. MONAHAN: Your Honor, we have no objection
22 to accommodating the schedule of all counsel. Three
23 o'clock, I think, should be sufficient. I do believe we
24 have sufficient time next week to address all the
25 issues, especially now that the Red Sox are not going to

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1 the World Series, we can work late into the night every
2 night next week.

3 I also believe, Your Honor, that we have made
4 some adjustments to the Proponent's presentation this
5 morning that I think are going to be able to streamline
6 the presentation. I think we will make a fair amount
7 more headway than in the last couple of days.

8 ADMINISTRATIVE LAW JUDGE: All right. Thank
9 you, Mr. Monahan. Ms. Deskins.

10 MS. DESKINS: We have no objection.

11 ADMINISTRATIVE LAW JUDGE: All right. Is
12 there anyone else that would like to be heard on the
13 issue?

14 All right. Mr. Carswell, we'll stop at 3:00
15 today.

16 MR. CARSWELL: Thank you, Your Honor.

17 ADMINISTRATIVE LAW JUDGE: I would,
18 nevertheless, like to take a lunch break. I don't think
19 we want to work straight through, so at the appropriate
20 time I would like to break for lunch.

21 All right. Any other preliminary matters?

22 All right. It appears not. I don't have your
23 exact time calculated, so I'm not going to give you that
24 until we get to Yakima, but then I'll give you a summary
25 of how the time was utilized this week.

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1 All right. Mr. Monahan.

2 MR. MONAHAN: Thank you, Your Honor. This
3 actually may qualify as the last of the preliminary
4 matters, but it also segues into the presentation this
5 morning. In response to a number of the questions that
6 were raised yesterday by the Department and Mr. Moody,
7 we are going to call as the first witness this morning
8 Mr. Tom Gasseling. Mr. Gasseling is going to offer some
9 remarks regarding the definitions that were discussed
10 yesterday, as well as a couple of the provisions on the
11 administrative committee provisions.

12 In addition, there were some questions raised
13 as to whether perhaps particular verbiage might have
14 been better stated to effectively address the intent of
15 the Proponent's Committee, and to that end Mr. Gasseling
16 will be proposing some minor verbiage changes to more
17 accurately reflect the intent of the committee.

18 After Mr. Gasseling, and this is going to
19 constitute a change to our original presentation that we
20 handed around to everyone, I'll defer to Your Honor if
21 perhaps we should make this an exhibit, because I keep
22 referring to it, but the fact that it's being changed
23 may dissuade us from that course.

24 In any event, the next witness who would have
25 appeared on the schedule would have been Reggie

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1 Brulotte, discussing expenses and assessments, Sections
2 991.30 and 991.31. Ms. Brulotte was going to reappear
3 again and talk about reports and records, 991.60,
4 991.63. Then Duane Desserrault was going to talk about
5 the miscellaneous provisions at Sections 991.70 through
6 991.94.

7 The collective judgment of the administrative
8 -- or excuse me, of the Proponent's Committee is that
9 these are the nuts and bolts, procedural mechanisms
10 involved in the order, and that the author of those
11 provisions, Mr. Rod Christensen, who is with us today,
12 might be perhaps the best witness to answer questions
13 about those provisions and to present testimony about
14 what they were intended to accomplish and how they are
15 intended to operate.

16 So to that end after Mr. Gasseling we will
17 call Mr. Rod Christensen. He will substitute for those
18 provisions that I just mentioned.

19 ADMINISTRATIVE LAW JUDGE: The spelling of Mr.
20 Christensen's last name, please.

21 MR. MONAHAN: I'll need some help here.

22 ADMINISTRATIVE LAW JUDGE: All right. Could
23 you come to the podium there and turn on that microphone
24 for us? All right. Thank you.

25 MR. CHRISTENSEN: My name is Rod Christensen.

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1 That's R-o-d, second name, C-h-r-i-s-t-e-n-s-e-n.

2 ADMINISTRATIVE LAW JUDGE: Thank you. And
3 would you identify yourself by how you have participated
4 with the Proponent's Committee?

5 MR. CHRISTENSEN: Yes. I am a consultant. I
6 have a small consulting firm in Kennewick, Washington.
7 The Proponent's Committee hired me approximately 18
8 months ago to help draft the language of the order.

9 ADMINISTRATIVE LAW JUDGE: All right. Good.
10 Thank you so much.

11 Thank you, Mr. Monahan. You may continue.

12 MR. MONAHAN: Thank you, Your Honor. That's
13 the last of the preliminary matters, and we would call
14 Mr. Tom Gasseling to the stand.

15 ADMINISTRATIVE LAW JUDGE: All right. Thank
16 you. Mr. Gasseling, do you want to get some water
17 before you start?

18 MR. GASSELING: That might be a good idea.

19 ADMINISTRATIVE LAW JUDGE: Okay. Mr.
20 Gasseling, would you again state your full name and
21 spell your names?

22 MR. GASSELING: My name is Thomas W.
23 Gasseling, T-h-o-m-a-s, W., Gasseling,
24 G-a-s-s-e-l-i-n-g.

25 ADMINISTRATIVE LAW JUDGE: I believe you were
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1 sworn in yesterday. Is that correct?

2 MR. GASSELING: Yes, I was.

3 ADMINISTRATIVE LAW JUDGE: All right. You
4 remain sworn. You may proceed.

5 MR. MONAHAN: Your Honor, we are going to
6 deviate a little bit from prior proceedings, and we are
7 -- I'm going to conduct a limited direct examination of
8 Mr. Gasseling.

9 ADMINISTRATIVE LAW JUDGE: Thank you.

10 ***

11 THOMAS W. GASSELING,
12 having previously been duly sworn, according to the law,
13 testified as follows:

14 BY MR. MONAHAN:

15 Q. Mr. Gasseling, could you please tell us
16 who you are and what you do?

17 A. Well, my name is Tom Gasseling. We have
18 a farm in Wapato, Washington, and we raise hops and
19 other crops.

20 Q. How long have you been doing that?

21 A. We are fourth or fifth generation farmers
22 in the valley.

23 Q. Do you have any personal knowledge or
24 familiarity with prior orders, Mr. Gasseling?

25 A. Yes, I do.

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1 Q. Can you describe that, please?

2 A. During the prior Hop Marketing Order I
3 was employed by John I. Haas Incorporated, a dealer,
4 major dealer, and I was an alternate on the hop -- or
5 excuse me, the HAB, which was the Handler Advisory Board
6 for the prior marketing order.

7 Q. Did you play any role on the Proponent's
8 Committee in the development of the Hop Marketing Order
9 that is being currently proposed, Mr. Gasseling?

10 A. Yes, I did.

11 Q. Could you describe your role?

12 A. I was asked to serve on the committee to
13 help develop the language for a proposed marketing order
14 and to get information from the industry as part of that
15 committee to put together a proposal that was hopefully
16 to be acceptable to the majority of the industry.

17 Q. Please describe your efforts and the
18 efforts of the other members of the committee in
19 obtaining that information from the rest of the
20 industry, sir.

21 A. Well, as I think Steve Carpenter's
22 testimony alluded to, originally there was a committee
23 to explore what we could do to help alleviate the
24 oversupply, and from that there was a Proponent's
25 Committee formed, of which I was one of the members.

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1 That committee was made up of large, small, medium-sized
2 growers from different areas. We had a number of
3 meetings in all of the states to discuss the original
4 proposal as we originally started to develop it, and I
5 can tell you that it's considerably different today than
6 it was when we first started. But through input of the
7 grower community, and I think I need to emphasize that
8 this document is not a document strictly put together by
9 the Proponent's Committee. It was put together with
10 input from the total industry. Opponents, proponents,
11 people that consider themselves neutral, all of these
12 areas were discussed, and ultimately this is the
13 document that was put forth.

14 Q. Thank you, sir. I'd now like you to
15 direct your attention to the definitions' portion of the
16 proposed order, specifically Sections 991.01 through
17 991.13.

18 ***

19 MR. MOODY: Excuse me, Brendan, I don't mean
20 to interrupt. He was referring to this document. I
21 just want, so I can follow it in the record later, what
22 exhibit or what document he's referring to. Did he mean
23 the Federal Register Notice? Is that what he's
24 referring to?

25 MR. GASSELING: Yes. The proposed Federal
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1 Marketing Order.

2 MR. MOODY: Great. Okay. Thank you, Mr.
3 Gasseling.

4 ***

5 BY MR. MONAHAN:

6 Q. Sir, has the -- since yesterday's
7 exchanges regarding specific verbiage within the
8 definitions themselves, has the committee had the
9 opportunity to revisit and reconsider certain word
10 usages?

11 A. Yes, we have.

12 Q. Does the committee have any proposed
13 changes?

14 A. Yes, we do.

15 Q. Could you please describe those for those
16 assembled?

17 A. Well, first of all, I would like to
18 explain that when we put this document together we
19 utilized portions of the old Hop Marketing Order and
20 portions of the Mint Marketing Order, which is a
21 functioning order that has stood the test of time, so
22 there are some things in here that don't contradict, but
23 they use different terms, which mean the same. So
24 that's what we're going to try to clear up at this
25 point.

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1 First of all, do you want me just to go through the
2 -- start with the top?

3 Q. Mr. Gasseling, what I'd like you to do
4 first is rather than talk about some of the particular
5 definitions and how they operate, which is what we'll
6 get into in a moment, I'd like you to first...

7 A. Just the changes in verbiage.

8 Q. Exactly.

9 A. Okay. In 991.04 there was the question
10 where it talks about grown and harvested in the United
11 States. That should be changed to the production area.
12 I think all -- I already addressed item B under that
13 section, that is an informational statement only, for
14 informational purposes. It's not intended to be
15 involved in any other aspects of the order.
16 In 991.05 we should state production area means rather
17 than all, it should be the following states with
18 commercial production.
19 And then we go up -- or to 991.08, Section A, and it's
20 under the handle designation, but we -- the word dealer
21 is in there. Dealer is meant to be synonymous with
22 handler, but because we define handler, that dealer
23 should be handler. The word handler.
24 If we move down to 991.15, B, it states independent
25 producer. Independent producer means the same thing as

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1 producer. That language somehow was left in there. In
2 the original order there was a co-op and so there were
3 cooperative members and independent members, but in this
4 case independent producer is the same as producer, so
5 the independent should be eliminated.

6 And I think that's it.

7 Q. Thank you, Mr. Gasseling. I'd like to
8 direct your attention to Section 991.06, the definition
9 of producer, and I'd ask you to read the first sentence
10 of that definition into the record.

11 A. "Producer is synonymous with grower and
12 means any person engaged in a proprietary capacity in
13 the commercial production of hops."

14 Q. Sir, do you know where that language
15 comes from?

16 A. Well, the language, with the exception of
17 the word hops, came from the functioning Far West
18 Spearmint Marketing Order.

19 Q. Did the Mint Marketing Order contain the
20 language that appears after the first sentence?

21 A. Yes.

22 Q. Tell me what the Proponent's Committee
23 was trying to accomplish by including this definition.

24 A. Excuse me. It did not include that. The
25 multiple legal entities...

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1 Q. Okay.

2 A. ...we included that.

3 Q. I'm sorry. Tell me why the hop, the
4 Proponent's Committee, decided to add that additional
5 verbiage.

6 A. Well, in the meetings we had throughout
7 the industry there was considerable concern that
8 representation on the committees and voting committee
9 members would be done in a fashion that the numbers
10 could not be skewed. The basic concept was to have one
11 grower, one vote, and the reason this verbiage was added
12 in there was so that it would eliminate as best we could
13 the possibility where same entities or same groups or
14 same farms could create a number of different grower
15 entities but under the same ownership ultimately, thus
16 having a number of votes, more than they should, which
17 would then have the effect of skewing any voting
18 procedure for representation.

19 Q. Sir, I'm going to imagine you might hear
20 some hypothetical questions in your cross examination
21 today regarding examples of directors or stockholders or
22 officers. Is this definition intended to be exhaustive
23 and comprehensive and to address every possible
24 scenario?

25 A. Well, I think some of the hypotheticals

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1 would probably have to be addressed by the hypothetical
2 committee themselves, you know. I -- it's not intended
3 to cover everything. There's no way you could write a
4 document that would cover every single possibility, but
5 this is the framework for the committee to address
6 specific issues, but the intent, again, is that the
7 growers can feel comfortable that their vote is
8 important and is not being overshadowed by a situation
9 where -- and I'll give you an example.

10 In the past marketing order, and that's why this is
11 considerably different than the old one, the past
12 marketing order you could have as many entities as you
13 wanted, and they could all have common boards of
14 directors or they could have common ownership or they
15 could have common banking, and you got a vote for each
16 one of those entities. So what would happen is there
17 could be a grower that -- and I'll talk from experience
18 in the old one, John I. Haas Incorporated had 4,000
19 acres of hops and one entity. They got one vote. There
20 were individuals who had less than 200 acres and had
21 three, four, five, six, seven votes.

22 And, again, when we talked to the industry and talked to
23 people out there, and this was a major concern of the
24 opponent's group that this not be allowed to happen,
25 that the votes would be equal, and they would get equal

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1 representation. So that's why that was put in there.

2 Q. You said, sir, the issues of whether a
3 growing operation or a given corporate organization
4 would have one vote or two votes or however many votes
5 would be determined by the committee. You don't mean
6 this committee?

7 A. No, not by this committee. The
8 administrative committee set up after the marketing
9 order would be voted in.

10 Q. Thank you, sir. I'd like you now to
11 direct your attention to Section 991.08.

12 ***

13 ADMINISTRATIVE LAW JUDGE: Mr. Monahan, let's
14 just make sure we have the spelling in the record of the
15 corporation mentioned a couple of times, the John Haas.

16 MR. GASSELING: The corporation's name is
17 John, J-o-h-n, I., Haas, H-a-a-s, Incorporated.

18 ***

19 BY MR. MONAHAN:

20 Q. Turning your attention then to Section
21 991.08, the definition of handle. Could you please tell
22 us where the language appearing under this definition
23 came from?

24 A. It also came from the Mint Marketing
25 Order.

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1 Q. We heard some questions yesterday about
2 whether brewers, for example, would be considered
3 handlers. Can you please offer testimony describing the
4 intent of the committee in coming up with the definition
5 of handler?

6 A. Well, the intent of the committee was to
7 try to discern between a producer and a handler, a
8 person that totally handled hops versus a producer who
9 just produced. In this case here we have a situation
10 where we do have growers that -- or producers that
11 deliver directly to the end user. And in that case the
12 producer would, in fact, be the handler. And so we were
13 trying to explain what a handler was and what a handler
14 was not, you know. A person delivering his -- a
15 producer delivering his product to a handler, even
16 though he's transporting it, is not considered a
17 handler. And so there are the exemptions so that we
18 could make sure that everybody understood what that
19 meant.

20 Q. Just for clarification, sir, and I'm not
21 going to ask you to parse sentences, but if there are
22 -- let's just talk about examples. If a producer sells
23 directly to a brewery, an end user, who is the handler?

24 A. The producer.

25 Q. If a producer delivers product to a

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1 consignor, who is the handler?

2 A. The consignor.

3 Q. If the producer sells to a dealer, as you
4 understand that term, and I'll ask you to describe it in
5 a moment, who is the handler?

6 A. The dealer.

7 Q. What's a dealer?

8 A. A handler.

9 Q. In today's market and industry how many
10 dealers in your opinion are there, and please describe
11 what they do.

12 A. Well, in my opinion there are actually
13 two functioning handlers or dealers, and that would be
14 S. S. Stiener and John I. Haas Incorporated.

15 Q. How would you define Hop Union or Yakima
16 Chief?

17 A. All I know is that they basically do not
18 buy hops from the grower. They do not -- I cannot sell
19 them hops. They are an organization that I basically do
20 not have access to, and it's my understanding that
21 Yakima Chief does not take title to the product. The
22 acquire it, so as we defined it here they would be
23 considered the handler. And but I don't have access to
24 that, so I don't consider them to be a handler in the
25 sense that I can sell my product to.

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1 Q. Let me see if I can break it down. If we
2 exclude all those producers who could eventually be
3 handlers under this definition, exclude those instances
4 in which there are direct sales made to end users, how
5 many handlers exist in the world today under this
6 definition?

7 A. Basically two major handlers. There may
8 be some smaller handlers in Europe, but for our market
9 or my market here in the US there would be two major
10 handlers.

11 Q. You do understand, however, that the
12 consignors, the Yakima Chief, Hop Union, they would meet
13 the definition of handler under 991.08 as well?

14 A. Yes, they would.

15 Q. I'd like you to turn your attention then,
16 sir...

17 ***

18 ADMINISTRATIVE LAW JUDGE: Just so I'm clear
19 so that there would be a total just of four if you
20 include those two entities as well? There would just be
21 four handlers?

22 MR. GASSELING: Well, you have John I. Haas,
23 you have...

24 ADMINISTRATIVE LAW JUDGE: Don't talk to me...

25 MR. GASSELING: You have John I. Haas,

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1 Incorporated, you have S. S. Stiener, you would have
2 Yakima Chief as a handler because they acquire. They
3 don't take title, but they acquire, and then you would
4 have the direct sales made by growers to brewers. They
5 would be considered handlers.

6 ADMINISTRATIVE LAW JUDGE: The brewers would
7 be considered...

8 MR. GASSELING: No.

9 ADMINISTRATIVE LAW JUDGE: ...handlers?

10 MR. GASSELING: The growers would be
11 considered handlers.

12 ADMINISTRATIVE LAW JUDGE: The growers would
13 be considered handlers. Go ahead and follow up, Mr.
14 Monahan, if there's anything further there for
15 clarification.

16 ***

17 BY MR. MONAHAN:

18 Q. The question was asked -- I did the math
19 in my head, and the last time I did add two and two it
20 was four as well. If we add the two consignors and the
21 two persons or entities that you say meet the definition
22 of handlers, excuse me, dealers, I just want to have it
23 clear for the Department and the people assembled here
24 today. How many entities, how many organizations really
25 are likely to be defined as handlers as entities who

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1 handle hops under these proposed definitions? Excluding
2 the instance in which a producer sells direct to a
3 brewer.

4 A. Well, there would be John I. Haas, there
5 would be S. S. Stiener, there would be Yakima Chief, and
6 I forgot, because I was talking about major handlers,
7 the other one would be Hop Union.

8 Q. So four.

9 A. Four.

10 Q. Thank you. Turning your attention now,
11 if you would, to definition 991.13, the term, new
12 producer. Do you know why that definition appears at
13 the tail end of the definition section?

14 A. We had discussions with the Department as
15 this process went forward, and there was concern from
16 the Department's side that potentially a grower, a new
17 grower in crop year 2003, would be excluded from this
18 process. So this language was added in there so that
19 if, in fact, there were a bona fide new producer in
20 2003, that producer would be able to obtain allotment
21 base.

22 Q. We heard from a new grower yesterday.
23 Was this the type of situation that this language was
24 intended to encompass?

25 A. Yes. That grower yesterday was a new
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1 grower in 2002, so he would have been covered under the
2 old formula, but there was a concern that somehow there
3 might be a new grower in '03, that would not be covered.

4 Q. I have reviewed this order and scanned it
5 for the term, new producer. I do see it appears at
6 Section 991.53, Sub-Section G. Is that the provision to
7 which you're referring?

8 A. Which is it again?

9 Q. 991.53, Sub G.

10 A. Yes, it is.

11 Q. I am going to ask you to read that into
12 the record just so we do have a clear record, sir.

13 A. "Notwithstanding the foregoing, any
14 person or entity who has entered the hop industry as a
15 new producer for the 2003, crop year shall be entitled
16 to an allotment base as a matter of right. Such
17 allotment base shall be calculated in the same manner as
18 with any other producer, provided, however, that that
19 -- that the new producers representative base period and
20 initial allotment base shall be limited exclusively to
21 the 2003, crop year, and any such allotment shall be
22 determined by the new producers' actual production in
23 2003.

24 Q. Thank you. Sir, I'm going to ask you to
25 jump ahead a little bit to the administrative

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1 provisions, specifically Section 991.22, which sets
2 forth the powers of the administrative committee. And
3 in the context of that provision I'm going to ask to
4 borrow Exhibit 10 from the court reporter and have you
5 look at some of the comments that are included there.
6 Sir, Exhibit 10 is, as you recall, is the document that
7 was read into the record by Mr. Newhouse yesterday. Is
8 that right?

9 A. Yes, I do.

10 Q. And he had been assigned the role of
11 describing and articulating the particular provisions
12 that set forth the administrative committee's powers,
13 duties, et cetera.

14 A. Yes.

15 Q. Could you read into the record the note
16 that Mr. Newhouse appended to his discussion for Section
17 991.22?

18 A. Yes, I will. "Note. The committee would
19 have the ability to exempt those producers for whom this
20 order is not intended. It is not the intention of the
21 order to restrict the actions of any brewer and their
22 growing activities, producing hops, used in their own
23 brewing operation."

24 Q. After yesterday's testimony has the
25 committee had the chance to gather and discuss that

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1 note?

2 A. Yes, we have.

3 Q. Is it the position of the committee that
4 that is an accurate note, sir?

5 A. That is as accurate -- no, it is
6 inaccurate.

7 Q. Do you know what the basis, or rather the
8 background, of that note is?

9 A. In the beginning of the development of
10 this document there was quite some discussion about
11 actually exempting all breweries from this marketing
12 order. That would mean that any production that an
13 individual brewery had they would not be covered. There
14 was considerable objection to that from the growing
15 community. There was considerable concern from the
16 Department of Agriculture with regards to that type of
17 an exemption. It was in one of the original drafts. It
18 was subsequently taken out, and there is no exemption
19 for any producer in the marketing order, and although we
20 don't, you know, we agree we don't want to restrict
21 brewery activities, the -- any production by a brewery
22 is covered under this marketing order.
23 The other part of it where this all came was from the
24 original Hop Marketing Order. There were special
25 allotments granted in specific instances where breweries

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1 wanted a specific variety. That ability is still in
2 this marketing order. The committee can, if they wish,
3 grant additional allotment bases or base for specific
4 instances, specific varieties, or whatever.
5 So I think the problem we had was Mr. Newhouse, I don't
6 want to say got confused, but had not taken the language
7 that had been taken out out of his presentation. So
8 consequently these comments are not the intent of the
9 committee, nor are they reflected in the document
10 itself.

11 Q. Sir, you mentioned that the executive
12 committee, the administrative committee, I'm sorry, may
13 have the power to grant exemptions for particular
14 variety. I've perused this document. Is there
15 particular language that gives it that, or is that based
16 on the activity prior?

17 A. No. If I said exempt, what it -- this
18 document has the ability to grant additional allotment
19 for specific varieties or whatever the committee, the
20 administrative committee would wish. And that's under
21 the additional allotment section, where they can grant
22 additional allotments to growers based on the market
23 situation, based on a number of -- and I don't have that
24 right in front of me, but that's what I'm talking about.

25 Q. To your knowledge, sir, did that ever

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1 happen under the prior Hop Marketing Order?

2 A. Yes, it did. There was a special fuggle
3 allotment set up for a specific brewery, and a number of
4 pounds set up under that special fuggle allotment of
5 which the growers who wished to grow fuggles had access
6 to.

7 Q. One of Mr. Newhouse's defenders to my
8 left has asked me to ask you if you're aware of
9 activities he may have had that have kept him busy since
10 the first draft until today?

11 A. Well, and I appreciate that, because, of
12 course, Mr. Newhouse is in our representative branch in
13 our State Government and was not at every one of these
14 meetings. And our original intent was that we could
15 divide this up for people to make the presentations and
16 then the people who had the most knowledge could then
17 answer any specific questions, and that didn't would out
18 so good.
19 So that's, you know, he had a lot of other duties, too,
20 and it was just an error.

21 Q. Thank you, sir.

22 ***

23 ADMINISTRATIVE LAW JUDGE: How do you spell
24 fuggle?

25 MR. GASSELING: F-u-g-g-l-e.

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1 ADMINISTRATIVE LAW JUDGE: Thank you.

2 MR. MONAHAN: Your Honor, that concludes my
3 direct inquiry.

4 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.
5 Gasseling, you may present any other information that
6 you would like to present at this time.

7 MR. GASSELING: I think I'm done.

8 ADMINISTRATIVE LAW JUDGE: I would invite
9 questions for Mr. Gasseling. Let's begin with any
10 questions by those who are here who are in favor of the
11 proposals. Any clarifying questions or any other
12 questions?

13 There appearing to be none I would now invite
14 questions from those who are against the proposals. Mr.
15 Moody.

16 MR. MOODY: Thank you, Your Honor.

17 ADMINISTRATIVE LAW JUDGE: Is your mic close
18 to you?

19 MR. MOODY: Okay. Yes.

20 ADMINISTRATIVE LAW JUDGE: That's better.

21 MR. MOODY: All right.

22 ***

23 BY MR. MOODY:

24 Q. Mr. Gasseling, I apologize for my
25 confusion. We'll try to work this out.

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1 A. Join the club.

2 Q. I want to first ask you about some
3 specific entities as to whether or not they'd be
4 characterized as a handler. If I understood your
5 testimony, you mentioned Haas and Stiener. In your view
6 those two entities would be handlers. And that Sierra
7 Chief would be handler, and Hop Union would be a
8 handler. Is that -- am I correct so far.

9 A. Yakima Chief?

10 Q. Yes.

11 A. Yes.

12 Q. Okay. So those four entities are
13 handlers.

14 A. Would you repeat those again?

15 Q. Okay.

16 A. Because you confused me on Sierra Chief.

17 Q. Okay. Oh, I'm sorry. I apologize. I
18 just -- that's my own brewery, one of my brewery
19 preferences. All right. Haas and Stiener. You said
20 they're handlers. Yakima Chief and Hop Union. Those
21 two are also handlers.

22 A. Yes.

23 Q. Okay. I want to ask you about some other
24 entities as to whether or not they're handlers. The
25 first one is Jaenicke, and that's spelled

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1 J-a-e-n-i-c-k-e.

2 A. Albert Jaenicke?

3 Q. Yes.

4 A. I don't know.

5 Q. Okay. Do you know the firm?

6 A. No. I know him, but I don't even know if
7 he's selling hops or even doing anything now.

8 Q. Okay. Hesselberger?

9 ***

10 ADMINISTRATIVE LAW JUDGE: Mr. Moody, would
11 you spell these as you go along...

12 MR. MOODY: Yes.

13 ADMINISTRATIVE LAW JUDGE: ...as best you can?

14 MR. MOODY: Yes, Your Honor. It's

15 -- Hesselberger is H-e-s-s-e-l-b-e-r-g-e-r.

16 MR. GASSELING: That's a new one to me, too.

17 MR. MOODY: Okay.

18 ***

19 BY MR. MOODY:

20 Q. Lupouk, L-u-p-o-u-k.

21 A. Well, they were a handler. I don't know
22 whether they're still in existence or not, but they were
23 a handler.

24 Q. Okay. LupeX, L-u-p-e-x.

25 A. Have no idea who they are.

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1 Q. Hops Direct.

2 A. Have no idea.

3 Q. All right. Would European-based
4 companies that have relationships with producers and
5 acquire hops from US producers, would they be considered
6 handlers under your definition?

7 A. Yes. If they're -- let me clarify that.
8 If they are the first line of purchaser of US hops, then
9 they would be the handler. If they were purchased,
10 giving an example, through S. S. Stienner, then S. S.
11 Stienner turned around and sold those hops to one of
12 these dealers that you mentioned, then the handler would
13 be S. S. Stienner.

14 ***

15 ADMINISTRATIVE LAW JUDGE: All right. We'll
16 change the tape at 8:23.

17 ***

18 ADMINISTRATIVE LAW JUDGE: We're back on
19 record. I said 9:23, and I meant -- excuse me. I said
20 8:23. I meant 9:23 that we were changing the tape.

21 All right. We're back on record now at 9:24.

22 Mr. Moody, you may proceed.

23 MR. MOODY:

24 Okay.

25 ***

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1 BY MR. MOODY:

2 Q. One other entity I wanted to ask you
3 about, Mr. Gasseling, and that's Kalsek, K-a-l-s-e-k.

4 A. I don't know. We have a pretty sheltered
5 life out on the reservation, so, you know, there are not
6 too many people venture out there, and as I said, I deal
7 with basically two people, and I haven't dealt with
8 those other ones. So I don't know.

9 Q. Okay. How is it that -- and handlers
10 have certain legal responsibilities to the committee?

11 A. Yes.

12 Q. And among those are reporting and record
13 keeping?

14 A. Yes.

15 Q. And they can be subject to investigations
16 and audits and that sort of thing by the committee?

17 A. Yes.

18 Q. All right. How is it that the committee
19 would have access to handlers and control over, legal
20 control over handlers based in Europe?

21 A. Well, they would have to have business
22 licenses, I would imagine, in the US and subject to US
23 laws and regulations.

24 Q. But are you expecting that committee
25 personnel would go over to Europe to review their

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1 records?

2 A. Well, under the prior marketing order we
3 had the same situation, and those entities had no
4 problem reporting and taking care of the duties that
5 were required of them, and I would not see that that
6 would be any problem in this current marketing order
7 either.

8 Q. All right. So you're anticipating sort
9 of a degree of voluntary cooperation.

10 A. No. I consider it mandatory cooperation.

11 Q. All right. But how -- what -- in the
12 extent that the Hop Committee had a procedure where they
13 audited every handler's books every three years on a
14 rotating basis, I think it's pretty easy to see how
15 they'd audit the handlers in Yakima, but how would they
16 audit the handlers based in England or Germany?

17 A. Well, I would imagine that they all have
18 some kind of outlet in the US, and they would be
19 required to supply the information that was required by
20 law to verify what they have purchased and what their
21 responsibilities were. And if they refused to do it, I
22 think the Department of Agriculture is pretty intent on
23 making sure that people comply.

24 Q. All right. So to the extent that a
25 handler did not have business facilities in the

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1 production area, then the committee would look to USDA
2 for any compliance activities?

3 A. Well, I can't speak specifically for what
4 the committee might ultimately do, because I'm not on
5 that committee, and they haven't made that
6 determination, but if you had a situation where a
7 handler refused to cooperate or refused to abide by the
8 law, there's going to be repercussions. They're not
9 going to be doing business here very long I wouldn't
10 think.

11 Q. Is there any situation where a brewer
12 would be treated as a handler?

13 A. I think Anheuser-Busch with their own
14 farm production would be the handler.

15 Q. All right. And what -- under which
16 definition or which section of the definitions would
17 they be deemed a handler?

18 A. They acquire the hops.

19 Q. Well, I think you described them as a
20 producer.

21 A. No. Elk Mountain Farms, Busch Ag
22 Resources would be the producer. You know, Mr. Moody, I
23 don't know exactly how Anheuser-Busch has their
24 situation set up, but I have to believe that
25 Anheuser-Busch would deal in a fashion to make sure that

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1 everything was legal and taken care of.

2 Q. All right. In a situation where a brewer
3 just went out and bought some land and grew hops for
4 their own use, how is it under your definitions they
5 would be treated as a handler? I'm looking at, I guess,
6 Section .08. Would it be use hops commercially of one's
7 one production?

8 A. It sounds reasonable.

9 Q. Okay. So there are situations where
10 brewers could and would be treated as handlers?

11 A. Yes. Could be.

12 Q. All right. Looking at your definition of
13 new producer...

14 A. Yes.

15 Q. ...and if I understand what you said is
16 that the only relevance of that term, new producer, is
17 to deal with the situation where somebody was a producer
18 only in '03. Is that the only relevance of the
19 definition, new producer?

20 A. That's what the statement says. It
21 refers to 2003.

22 Q. All right.

23 A. If you were a producer in 2002, and this
24 is 2003, you're not a new producer.

25 Q. Okay. But you'd be -- but if you were a

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1 producer in '02, but not in '03, you'd still be entitled
2 to base?

3 A. Well, I think it ultimately will be
4 determined by what the ultimate periods that are set,
5 the eligibility periods for calculation of base, the
6 eligibility periods for the voting.

7 Q. Well, under the proposal here in the
8 Federal Register, if you're a producer in '02, but not
9 in '03, would you be entitled to base?

10 A. A producer, as it's set up here, is
11 entitled to a base calculation from the years 1997,
12 through 2002. So from that standpoint he would be
13 included in the base calculation.

14 Q. Even though he's not now a producer?

15 A. Well, then it comes down to what year
16 determines -- you use to determine a producer.

17 Q. Right. And I couldn't tell from the
18 Federal Register what your intent was.

19 A. Well, our intent was originally that you
20 had to be a producer in 2001. That was the original
21 intent, and then that was extended, I think, to 2002,
22 2001, or 2002. That was the criteria for being able to
23 be eligible for base allotment, and that's how it reads.

24 Q. Okay. So if you're -- if you are -- if
25 you were a producer in '01, or '02, you would be

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1 entitled to base?

2 A. Yes.

3 Q. Okay. But if you were a producer in '97,
4 '98, '99, and 2000, you got out of the business, you
5 would not be entitled to base?

6 A. That's how it reads.

7 Q. Okay. But is that a correct statement if
8 you're in town?

9 A. Yes. And let me explain. The reason for
10 that was, again, it came down to discussions throughout
11 the industry that what happened in the original Hop
12 Marketing Order is they went back a number of years, and
13 people who were not bona fide producers were allowed to
14 acquire base, which created a problem where you had
15 people who were not producing hops having base. This
16 was set up so that if you were a producer in those
17 years, you were eligible. If you were not a producer in
18 those years, you were not eligible, and we set it up in
19 2001, because that's when we started the whole process
20 of setting up this marketing order, and all the growers
21 needed to be put on notice that this was the criteria
22 that was being used so that it would eliminate as much
23 as possible any kind of posturing or funny business of
24 trying to do things that might get you an inflated-base
25 allotment when you weren't entitled to it.

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1 Q. Okay. So if you're a producer in '97,
2 '98, '99, 2000, and 2001, but not in 2002, not in 2003,
3 would you be entitled to base?

4 A. Well, I guess I would have to, you know,
5 take exception as to -- or not exception but have you
6 explain to me what you consider not a producer.

7 Q. Well, you're -- the order defines the
8 term, producer. Is that correct?

9 A. Yes.

10 Q. Okay. So you're -- when I say not a
11 producer, what I mean to say is whatever it is you're
12 doing you don't come within the definition of 06 for
13 producer.

14 A. Well, it says you're engaged in a
15 proprietary capacity in the commercial production of
16 hops. So to not be a producer you would have to be, in
17 my estimation, totally out of the business completely,
18 have no trellises, no kilns, no picking machine, no
19 infrastructure to be a producer. Just because you have
20 an idle hop yard for a given year, you made the
21 decision, you still have the proprietary portion within
22 this definition, so because you made a decision not to
23 grow or to grow in any given year doesn't mean you're
24 not a producer.

25 Q. Okay. To make my hypothetical simple,

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1 let's say in '97, '98, '99, 2000, 2001, you were a
2 producer, and you sell your farm at the end of 2001, and
3 you move to God forbid, New York City. Now, would you
4 be entitled to base?

5 A. The intent of the committee was that
6 acreage, whatever that acreage is counted once, not
7 twice. So the intent of the committee is not that that
8 individual who sold the operation would then get base,
9 and the person that purchased that operation would then
10 get base. It's the same land, so there can only be one
11 base go against that, and the intent was to stop the
12 actual trade of base allotment.

13 Q. Okay. I was going to get to that in a
14 second, but just with my first hypothetical here, this
15 owner and farmer and the producer for '97, to '01, sells
16 the farm, moves to New York. Is he entitled to base?

17 A. Well, I would say under the definition he
18 would be entitled to the base, but wherever the farm
19 went would not be.

20 Q. Okay. Let's say he sells the farm to a
21 new producer, brand new producer, who produces on -- in
22 '02, and '03. Would that person be entitled to base?

23 A. So he was -- would you repeat the...

24 Q. Okay.

25 A. ...your hypothetical?

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1 Q. Right. Our first grower A produces '97,
2 to '01, and sells the farm, moves to New York. I think
3 you had said he, grower A, is entitled to base, because
4 he was a producer '97, to '01. And '01, being a
5 producer in '01, was the triggering event that entitled
6 you to base. So under that section he would be entitled
7 to base.

8 A. Yes.

9 Q. Okay. Now, grower B bought the farm, and
10 he's a producer in '02, and '03, so under that same
11 provision since he's an '02, producer, he'd be entitled
12 to base.

13 A. Under that provision he would.

14 Q. Okay. So the same farm would then be
15 getting base in effect twice; once for grower A and once
16 for grower B.

17 A. Under the scenario they would, but that's
18 not the intent of this section for that to happen.

19 Q. Would the Proponent's Committee agree to
20 include a modification on -- in the section on allotment
21 base specifically providing that a given farm can only
22 get base once?

23 ***

24 MR. MONAHAN: We are obviously willing to
25 consider any modifications that make sense. I...

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1 ADMINISTRATIVE LAW JUDGE: Mr. Monahan, just
2 so the record's clear, it's you speaking now rather than
3 Mr. Gasseling.

4 MR. MONAHAN: I apologize, Your Honor. Yes.
5 Brendan Monahan for the Proponent's Committee. We would
6 be happy to do that, however, I would suggest that the
7 definition of producer and the way it relates to
8 commercial production makes that clear, at least in
9 light of your New Yorker scenario.

10 Any event, we would obviously consider any
11 reasonable modifications to make that intent clear.

12 ADMINISTRATIVE LAW JUDGE: If I might just
13 inquire, with regard to Section 991.13, new producer, I
14 noticed that I would fit that definition, because I'm a
15 person who has not grown hops prior to 2003. So perhaps
16 it should be a producer who has not grown hops prior to
17 2003, rather than just person.

18 MR. MONAHAN: Mr. Gasseling, I'd ask you to
19 make that same proposal. I agree, Your Honor. In the
20 first -- in 991.13 is a person who has not grown hops
21 prior to 2003. Obviously, it needs to incorporate the
22 concept that that person is now growing crops in a
23 commercial capacity, and therefore, Mr. Gasseling, would
24 you agree that the word, person, in the first sentence
25 should be changed to producer?

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1 MR. GASSELING: Yes.

2 MR. MOODY: Okay.

3 ***

4 BY MR. MOODY:

5 Q. Now, let's say somebody is a producer in
6 '97, '98, '99, and 2000, and then they do not produce
7 hops in '01, or '02, but they nevertheless have their
8 hop yard there kind of on stand-by basis in case they
9 decide to get back in the industry at a later point.
10 But they've produced no commercial hops in '01, or '02.
11 Would they be entitled to base?

12 A. And they have the infrastructure and
13 everything? The yards are there, everything is in
14 place?

15 Q. Yes.

16 A. Yes. In my opinion they would.

17 Q. Right, but my concern is in '06, you have
18 to be engaged in the commercial production of hops, and
19 that seems to indicate that you have to produce a crop.
20 If you have some facilities there but you don't produce
21 a crop, you're -- at least under that language there you
22 wouldn't be considered a producer.

23 A. But you just read part of it. You didn't
24 read the part ahead of it, in a proprietary capacity,
25 which means you have ownership and a monetary investment

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1 in that operation. So I interpreted, and it was the
2 intent of the committee not to exclude those people,
3 because they had the -- an investment. They were
4 involved, they had the ability, and the infrastructure
5 was there, and just because they didn't grow in one or
6 the other years and quite frankly, in those years we had
7 the set-aside program, in which growers voluntarily
8 participated in not growing, not because they were
9 getting out of the business, but because they were
10 trying to help alleviate the overproduction that was in
11 effect. And they set that acreage aside for that
12 reason, and you can't penalize people for that.

13 Q. Right. And the set-aside was '02. Is
14 that correct?

15 A. Yes.

16 Q. So they would still be producers in '01.

17 A. They may well have been, but we also had
18 another voluntary program through the alliance where
19 people voluntarily left acres out, and they're still
20 producers.

21 Q. Okay. We had some good testimony
22 yesterday about the '02, set-aside. What other
23 set-aside are you referring to now?

24 A. Well, I think in Mr. Carpenter's
25 testimony he talked about the original industry

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1 discussions with regards to the Hop Alliance, and that
2 was an -- a quasi organization formed to try to get a
3 handle on this overproduction and get voluntary grower
4 participation. And it took different forms, either to
5 reduce acreage, to put a certain percentage of your
6 production in an alliance pool, a number of different
7 factors, but, in fact, in those years there were growers
8 that left acres idle.

9 Q. That was in the -- those years you're
10 referring to, would that be '01?

11 A. I think it was, yeah. The process
12 started, I think, in 2000, but it was '01. In that
13 timeframe right there I'm not specific on -- I'd have to
14 look to see when the alliance actually started, but that
15 was also a consideration. So there were a number of
16 things going on in those years that -- and have been
17 going on to try to get a handle on this overproduction.
18 And in no way was it or is it the intent of the
19 committee to penalize those people who tried to do the
20 responsible thing.

21 Q. Okay. Suppose a producer produces '97,
22 to '00, but then takes down their trellises and plants
23 peach trees but still has a harvesting facility on
24 their, physically on their land, but in '01, and '02,
25 their land is being used for the commercial production

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1 of peaches. Would they be entitled to receive a base?

2 A. You know, Mr. Mooney [sic], we can sit
3 here all day and do every supposition that you can think
4 of, and this document does not cover every possible one
5 you can come up with. And that's what the committee
6 would have to discern. There's a clause in here for the
7 hardship phase of it. If there is something that is a
8 real problem, the committee can designate a
9 sub-committee to address that. But you can sit here all
10 day and we can go over every possibility, and I can't
11 address every possibility. So if you do, I, you know,
12 you and I are going to be here a long time, but we're
13 not going to get anywhere.

14 The intent was not to penalize growers, and what you're
15 trying to get or to bring forward that if somebody left
16 his acreage idle but still had the infrastructure and
17 was a producer, and I consider a producer, and that
18 individual did it because of the -- to benefit the
19 industry, then they're a producer. And that was the
20 intent. That's how we've set it up. It won't hit every
21 item, but that -- those things as they were in the
22 original order, will be addressed.

23 And in the original order there were all kinds of
24 hardship cases, you know. My wife left me yesterday,
25 and I forgot to put my hops in, you know, pick them the

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1 right time. I mean, there were all kinds of potential
2 hardships, so that's where the committee comes in. And
3 for you and I to sit here this whole time and hit every
4 possibility, I can't do that.

5 Q. All right. Well, Mr. Gasseling, I mean,
6 the reason I'm asking at least some of these, you know,
7 to flush this out a little bit is because since base
8 could have a value potentially of several dollars a
9 pound, and people who are present producers may need to
10 buy, you know, enough pounds to cover their acreage from
11 people who haven't produced hops for years, physically
12 produced the hops, it is a very vital and valid economic
13 concern. We had one fellow yesterday from Idaho testify
14 he'd be out of business if he had to buy base.
15 So I know my questions may seem that they deal with kind
16 of hypothetical situations, but they can profoundly
17 affect the future of a producer who's producing hops
18 commercially today.

19 A. Well, I have some knowledge of that area.
20 I spent a number of years, and I think that statement
21 was a little bit overblown. I don't -- because it
22 takes, there's so many variables out there as to what it
23 would cost for base, what it would cost to do this, to
24 do that, and there was no verification that that, in
25 fact, was -- would be the case with this grower. And so

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1 I think it comes down to the fact that, again, as Ben
2 testified, if it -- if the marketing order works
3 properly, there will be some value. And that value is
4 more than offset by the benefits. But that testimony, I
5 know the individual, and I know that they're opposed to
6 the marketing order, but I don't take that comment that
7 if he had to purchase allotment, he would be broke.

8 Q. All right. You mean your...

9 A. That's my opinion.

10 Q. Okay.

11 ***

12 MR. MOODY: Maybe this is a question better
13 for Brendan. Are you going to have another witness
14 who's going to specifically address the -- how base
15 allotment is handed out, Mr. Monahan, or is this the
16 best witness for that?

17 MR. MONAHAN: What do you mean, how base
18 allotment is handed out?

19 MR. MOODY: Well, I mean, why it was the top
20 year rather than the average and some of those
21 considerations.

22 MR. MONAHAN: There's certainly a section that
23 we will be getting into regarding how base allotment is
24 calculated.

25 MR. MOODY: Okay.

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1 ADMINISTRATIVE LAW JUDGE: If I could ask a
2 question. Where are the hardship provisions or -- I
3 would just like to look at those while Mr. Gasseling has
4 raised that as a possibility, Mr. Moody.

5 MR. GASSELING: Well, Your Honor, it's in
6 Section 991.53B5.

7 ADMINISTRATIVE LAW JUDGE: Thank you. I'd
8 just like to read that. In fact, would you, Mr.
9 Gasseling, just read that into the record while we're on
10 this discussion.

11 MR. GASSELING: This is Section 991.53B5.
12 "The executive sub-committee shall act as a hardship
13 committee for establishment of initial allotment base.
14 Any producer has the right to petition the hardship
15 committee for special consideration for their initial
16 allotment base, provided that such position is in
17 writing and..."

18 ADMINISTRATIVE LAW JUDGE: Such petition?

19 MR. GASSELING: Oh, excuse me. "Such petition
20 is in writing and that it is based solely on hardships
21 brought about by acts of God. The hardship committee
22 may elect to defer their decision to the administrative
23 committee."

24 ADMINISTRATIVE LAW JUDGE: All right. Thank
25 you. Mr. Gasseling, I just wanted also to weigh in on

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1 your concern about being given so many hypotheticals.
2 Because if these regulations, these proposed rules
3 actually, become regulations, they will be rigidly
4 applied, it's necessary to pose hypotheticals to see
5 where problem areas might arise. Because regulations
6 may lock in the administering committee in such way that
7 they can't make exceptions.

8 So I note that particular provision, if it's
9 limited to acts of God, there might be things that the
10 committee would like to do that it would not be
11 permitted to do.

12 So, Mr. Moody, do not be discouraged in
13 offering hypotheticals that might expose inequities that
14 might occur if the regulations indeed have to be applied
15 as written.

16 MR. MOODY: All right.

17 ***

18 BY MR. MOODY:

19 Q. Mr. Gasseling, you talked briefly about
20 the committee's power to grant, in effect, an exemption
21 to cover the situation of the fuggle hops, and I'm
22 trying to understand in the order where that authority
23 comes from.

24 A. Well, I gave that as an example of what
25 the previous committee did. There is in -- let me

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1 -- give me a second, and I'll find it.

2 Q. I'm looking at 553E. That's the section
3 on additional allotment base, if that's what you're
4 referring to.

5 A. Well, also Section D, which states,
6 "Adjustment to allotment base periodically, but at least
7 once every five years, the committee shall review and
8 may adjust each producers' allotment base to recognize
9 changes in trends, production demand, and any such
10 adjustment may be made in accordance with the formula
11 prescribed by the committee with the approval of the
12 Department, with the approval of the Secretary."

13 Additional base allotment then goes on that
14 they can make additional base allotment available in a
15 certain amount.

16 Q. All right. But is there a provision in
17 this order similar to the authority under the old order,
18 where they basically just granted an exception, an
19 exemption for the fuggle hops.

20 A. Well, I think there's enough leeway in
21 that section that the committee could make additional
22 base allotment available to all growers for a specific
23 variety or varieties.

24 Q. Under E?

25 A. Under D.

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1 Q. Under D?

2 A. Yes.

3 Q. Okay. D seems to be limited to
4 situations where it would apply to an existing
5 producer's allotment base and not somebody who wanted to
6 come into the industry with a brand new experimental
7 variety, for example, which is what fuggles were.

8 A. Well, they weren't an experimental
9 variety. They were one of the old, established
10 varieties in the State of Oregon, and they were used
11 specifically for one brewer, and that brewer was very
12 concerned that that hops would not be able to be
13 delivered, so the committee set up a special fuggle
14 allotment and a certain amount of pounds, and those
15 pounds were available to any grower who wished to grow
16 fuggles.

17 Q. Okay. So the present authority to do
18 what you did with fuggles would be this 553 or 991.53D.
19 Is that correct?

20 A. I would put it under that category.

21 Q. Okay. Since...

22 A. Let me explain. The fuggle situation was
23 an allotment, special allotment that was made available
24 to all growers. Any grower could take it, but growers
25 in Washington didn't want to grow fuggles. Growers in

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1 Oregon did, and they utilized it. The Washington
2 growers for the most part didn't.

3 Q. Okay. So in the fuggle situation that
4 wasn't really adjusting an existing base. It was
5 providing new base for the fuggle variety. Is that
6 correct?

7 A. Well, it was adjusting base. It was
8 making additional base available, so it was an
9 adjustment.

10 Q. All right. But it was specifically tied
11 to fuggle. You had to produce the fuggle variety.

12 A. Yes.

13 Q. Okay. If I understand the base allotment
14 now is actually expressed in pounds of alpha acid?

15 A. Yes.

16 Q. So if I've got a base allotment of 10,000
17 pounds, under the proposal I can produce any variety of
18 hops.

19 A. Yes.

20 Q. Or change my varieties.

21 A. Yes.

22 Q. Or produce a new variety that is -- not
23 been presently produced.

24 A. Yes.

25 Q. Okay. But the base allotment that I have

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1 as a producer isn't tied to my variety.

2 A. It's tied to alpha.

3 Q. Just is tied to alpha pounds.

4 A. Yeah.

5 Q. Okay. So how would you do -- and again,
6 in looking at D in terms of adjustment to allotment
7 base, again, I don't see anything in there dealing with
8 authority to authorize base limited to specific
9 varieties. And I'm just wondering where you're getting
10 that authority from.

11 A. Well, I think -- I would interpret it to
12 be under changes in trends in production and demand.

13 Q. All right. But...

14 A. And the committee -- and that that
15 formula can be prescribed by the committee. So it's my
16 feeling that the committee would have the ability to
17 address a specific issue that was not basically in the
18 mainstream of the operation of the order.

19 Q. Okay. So even though base is expressed
20 as pounds of alpha acid, you're saying that under this
21 section the committee would have the authority to
22 express or to hand out base in terms of variety,
23 specific to variety, not limited alpha acid pounds?

24 A. Well, I think they would have the ability
25 to grant additional allotment, alpha allotment for a

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1 specific variety. That's how I would see it. If they
2 did, I mean, I feel that they would have the ability to
3 do that, but that would be totally at the discretion of
4 the committee with the approval of the Secretary to do
5 something like that.

6 MR. MONAHAN: Jim, I don't want to limit your
7 cross examination or tell you when to ask which
8 questions, but we are spending a lot of time now with
9 Section 991.53. That is part of our anticipated
10 presentation. Because of the changes that we have made
11 and because of today's limited hearing time, we had
12 intended to defer the allotment issues to the Yakima
13 hearing.

14 MR. MOODY: Oh, good. And will there also be
15 a witness who will be available to discuss the modified
16 effort requirement as well?

17 MR. MONAHAN: Mr. Gasseling, Mr. Carpenter,
18 Mr. Roy are going to talk about all of the provisions
19 that appear between 991.50 and 991.58, your meat and
20 potatoes provisions, Jim.

21 MR. MOODY: In Yakima?

22 MR. MONAHAN: In Yakima.

23 MR. MOODY: Okay.

24 MR. MONAHAN: That is true. You can ask all
25 you want of this witness, because eventually he'll be on

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1 the stand to answer these things, but we have not
2 presented them. They're not ripe as it were for
3 presentation at the moment, and we were going to
4 dedicate this morning to presentation of more of the
5 procedural...

6 MR. MOODY: Okay.

7 MR. MONAHAN: ...technical components...

8 MR. MOODY: All right.

9 MR. MONAHAN: ...of the order.

10 MR. MOODY: All right.

11 ***

12 BY MR. MOODY:

13 Q. In getting back to 06, Mr. Gasseling,
14 under your definition of producer, is there any
15 authority there in that section or in any other section
16 to in any way exempt any kind of a producer from the
17 requirement to have base allotment?

18 A. I don't understand that question.

19 Q. Okay. It kind of goes to the question
20 about the brewer exemption, which you're deleting now,
21 but I just want to make sure there's no -- other than
22 brewers who are producers, is there any other kind of
23 producer that might be entitled to any kind of an
24 exemption from having base allotment?

25 A. Brewers are not exempt.

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1 Q. Right. That's the change you're making.
2 I understand that, but is there any other kind of a
3 producer besides a brewer, any kind of a producer that
4 would be entitled to produce hops without having an
5 allotment?

6 A. Well, you can -- under this proposal you
7 can -- anybody can produce hops, but without allotments
8 you cannot move them into the trade. You can't sell
9 them, so anybody can produce hops. They have to have
10 allotment in order to sell them.

11 Q. Okay. And I want to talk about leasehold
12 interest for a second. If I don't own producing land,
13 if I just lease it from somebody else, under what
14 circumstances would I become a producer for the purposes
15 of 06?

16 A. Well, in our situation we lease a lot of
17 land, and we grow hops in that leased land, and we would
18 be the producer.

19 Q. Okay. Would the person you lease the
20 land from be a producer?

21 A. No.

22 Q. What if they retain a half interest in
23 the crop? Would they be a producer?

24 A. Well, they would have a proprietary
25 interest in the crop, so if half the crop was theirs,

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1 they would be a producer, I would think.

2 Q. Okay. So the same farm under that
3 hypothetical, the same farm could have two producers,
4 one the leasor and one the leasee.

5 A. For what reason? I mean, for voting
6 reasons, for -- what would be -- I don't quite
7 understand where you're...

8 Q. All right. Well, then let's back up one
9 click. Does this section on defining a producer, does
10 this determine eligibility to vote for committee
11 members, or does it determine eligibility to vote in
12 referendums, or both?

13 A. This is for voting for -- just a minute.
14 Let me read this for sure. This would cover voting for
15 representation. Again, the Department's going to -- we
16 are going to make a recommendation later as to how we
17 would see the procedure for grower referendum or grower
18 voting in the referendum, but the critical thing, the
19 intent all along in this is that it's one grower, one
20 vote.

21 Q. But all your testimony relates not to
22 who's entitled to vote in a referendum but just who's
23 entitled to receive allotment base and vote for
24 committee members.

25 A. I think if the -- it depends what the
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1 Department sets as their criteria for that voting
2 referendum, but this refers to how you vote for your
3 representation.

4 Q. Okay. So -- and there'll, if I
5 understand correctly, there'll be witness or witnesses
6 later to address the referendum issues.

7 A. Well, we will have testimony as to what
8 our recommendation would be to the Department as to how
9 that determination should be made.

10 Q. Okay. In a situation where in
11 determining your primary entity test, if a father owns
12 one farm, and the father and a son own another farm,
13 does that -- is that, since there is common ownership
14 there, would that be counted as one entity or two?

15 A. Well, ultimately, the committee would
16 have to make that determination, but I think it would
17 -- you would then, you would go from the common
18 ownership to is there common banking, is there other
19 things that would show that they are, in fact, two
20 distinct, separate entities versus basically one
21 organization that has -- is operating under two
22 different names. And again, this goes back to the fact
23 that it was very, very apparent from the growers that
24 that would be a rigid test that would have to be made
25 before those types of things would be allowed. So I

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1 think you would have to see how the rest of the
2 structure was set up. If, in my opinion, if the
3 banking and everything was done through the father's
4 organization, all through the father, then they would be
5 one organization. And in the mint business of which I
6 operate under the Mint Marketing Order, there's very
7 specific rules and regulations for what new growers are
8 and how they can attain base, and you can't just say
9 that I'm the son of this grower, and I want base. You
10 have to, in fact, show that you are operating
11 separately.

12 Q. All right. What provisions will there be
13 for transparency and accountability, meaning that will
14 the committee publish sufficiently in advance of
15 elections lists of handlers and lists of growers so that
16 the people in the industry will be informed of who the
17 committee believes are handlers and growers and would
18 have an opportunity to challenge those determinations?

19 A. Well, there would definitely be a list of
20 growers, and they may well have a list of handlers so
21 they know who is responsible for taking care of
22 collection of fees and so forth and record keeping, so I
23 would imagine the committee would have a record of all
24 of that.

25 Q. Okay. And those lists will be made

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1 publicly available?

2 ***

3 ADMINISTRATIVE LAW JUDGE: Mr. Moody, we may
4 need to change the tape.

5 MR. MOODY: Okay.

6 ADMINISTRATIVE LAW JUDGE: So I would like to
7 take a 15-minute break at this time. Please be back and
8 ready to go at 10:25.

9 ***

10 [Tape 2 Side 1]

11 ***

12 ADMINISTRATIVE LAW JUDGE: We're back on
13 record now at 10:29. Mr. Moody, you may resume.

14 MR. MOODY: Thank you, Your Honor.

15 MR. GASSELING: Mr. Moody, before you continue
16 would it be okay if I clarify a couple of things that I
17 think were a little bit -- I might have not understood
18 your questions or conveyed it in the proper manner, and
19 it had to do with who's responsible when it's a foreign
20 entity?

21 The way it's set up is that if it's a -- if a
22 grower sells to a foreign entity, dealer, or brewer, the
23 grower is the handler, and he's responsible for the
24 requirements. I was thinking with regards if they were
25 -- had actual offices and businesses here in the US and

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1 were situated in business licenses. So -- but if they
2 sell to a foreign one, the grower becomes the handler.

3 Secondly, the question about a brewery
4 operation. If the brewery operation has a growing
5 operation, the growing operation is the handler. In
6 most -- in some cases it may be the same entity, but if
7 they're not, it's the same situation as any other grower
8 who sells to a brewery. He would be -- or that entity
9 would be the handler.

10 So I hope that clarifies.

11 MR. MOODY: Okay.

12 ***

13 BY MR. MOODY:

14 Q. But if the brewery just buys some land in
15 its own name and grows hops for its own use, who would
16 be the handler in that situation?

17 A. Whoever is growing it. In this case it
18 would be the brewery, so they would be the handler.

19 Q. Okay. Just a couple of quick follow-ups,
20 and then I'm done. On the -- you deleted the term,
21 independent, in front of producer in terms of
22 eligibility for membership.

23 A. Yes.

24 Q. All right. Does that mean that if I'm a
25 bona fide producer, that I don't lose my eligibility to

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1 be on the committee if I happen to work for a handler or
2 even be a handler?

3 A. If you're a producer?

4 Q. Yes.

5 A. As long as you're a producer you don't
6 lose that. The independent, as I said originally, was
7 -- had to do in the old order where there was a co-op
8 involved in the calculation, so there were cooperative
9 members, and they were what was called independent
10 members. And we don't have a cooperative situation
11 here, and we don't have the distinction between a member
12 and an independent or an -- the word independent. So it
13 just needs to be taken out.

14 Q. Okay. So if somebody's a producer on a
15 farm as a partner in a farm, and they happen to also
16 work at the marketing office of Yakima Chief, they'd be
17 entitled to serve on the committee?

18 A. If they're a producer, yes.

19 Q. Okay. Or if they're an employee of a
20 producer, they'd also be entitled to serve on the
21 committee.

22 A. I think that's what it says in there.

23 Q. Okay. So you don't -- there's nothing
24 -- as long as you are a producer, there's nothing you
25 can do, no -- nothing you can do in the hop industry,

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1 anyway, that will divest you of your right to serve on
2 the committee.

3 A. Other than some kind of fraud or
4 something.

5 Q. There's no employment relationship in the
6 hop industry or marketing activity that will divest you
7 of your right to serve on the committee.

8 A. Well, given the criteria that you've
9 alluded to, no, but again, it comes -- I think it comes
10 back to that if there was some kind of -- a very
11 transparent attempt to circumvent, there would be some
12 question. And I think that's a critical issue with
13 regards to the hop industry as well as the mint
14 industry. It's a very transparent industry. We're not
15 very big. Everybody knows everybody. It's pretty hard
16 to pull the wool over somebody's eyes, so I think that
17 given that scenario it would be pretty evident. Plus in
18 order to get voted on the committee, you have to be
19 -- or to get on the committee you have to be voted on.

20 Q. Right. And the reason I asked the
21 question is because some orders have tried to get what
22 they call a pure grower category of members on the
23 committee, people who are grower onlys and don't have
24 various marketing affiliations.

25 A. Well, the old Hop Order was that way. We

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1 had a -- we had the grower committee, and we had the
2 dealer committee, and they were totally separate, and
3 they were set up specifically with the exception of the
4 co-op purely dealer. I mean, a dealer or a dealer
5 representative, even though we were, in my case with
6 John I. Haas, I could not be on the committee, and I was
7 an employee, because we were dealers, and we were on the
8 hop advisory board and not allowed to be on the -- so
9 that, you know, that was a specific thing in that order,
10 but in this order if you're a bona fide producer or an
11 employer of a bona fide -- employee, you have the
12 ability to serve.

13 Q. Okay. All right. You're a grower in
14 Washington state. Is that correct?

15 A. Yes, I am.

16 Q. Okay. Did you know or are you aware of
17 the fact that in Washington by statute they define what
18 a producer is? And it's defined as a producer who is,
19 and I quote, "Engaged in the business of producing any
20 agricultural commodity for a market in commercial
21 quantities." And that's RCW 15.65.020, Sub-Section 10.
22 And I ask you this question in reference to your
23 statement that you could, in your view the order defines
24 a producer as somebody who has facilities for production
25 but doesn't actually produce the commodity.

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ADMINISTRATIVE LAW JUDGE: Mr. Moody, I think that's a mischaracterization of what the witness said.

MR. MOODY: Okay. Then I apologize, Mr. Gasseling. I -- let's go back to that.

BY MR. MOODY:

Q. If you -- in '01, or -- '01, and '02, if you have -- if you don't produce hops but you have facilities for the production of hops, would you be considered a producer?

A. Ask the question again.

Q. Okay. For these critical years, '01, and '02...

A. Okay.

Q. ...if you don't actually produce hops commercially, you have no production, no harvesting from your land, but you have facilities for the production of hops, would you be considered a producer under your definition?

MR. MONAHAN: Just I would register an objection as to the completeness of the hypothetical and would ask with permission of the Court if under this hypothetical this grower person entity actually has hops

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1 growing on the operation that are not being sold.

2 MR. MOODY: Right. No hops grown, just -- but
3 just the facilities that could potentially be used for
4 the growing and harvesting of hops.

5 MR. GASSELING: I'm really confused now.

6 MR. MOODY: Okay.

7 ADMINISTRATIVE LAW JUDGE: Mr. Moody, perhaps
8 you misunderstood my comment as well. I thought that
9 the witness had previously testified that a person who
10 is growing hops would be a producer. And in addition to
11 that a person who had the equipment to do them but may
12 have laid out a season, those are my terms, would also
13 still be eligible.

14 I don't want to go back through all his
15 testimony, and I don't want to start over there, but I
16 thought what you had just said eliminated the growing
17 aspect of it entirely, and this witness did not do that.
18 He just indicated that one who was ordinarily engaged in
19 growing who for some reason had idled his production for
20 a season would not be eliminated. That's what I
21 thought.

22 MR. GASSELING: Your Honor, would you like to
23 come over here? That's basically what I said when you
24 gave that scenario. I used the proprietary example.

25 MR. MOODY: Okay.

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1 ***

2 BY MR. MOODY:

3 Q. But your definition then of producer
4 would then be a little broader than the definition of
5 producer by statute in Washington?

6 A. Well, I don't have the statute in front
7 of me, so I would -- if you could read it again so I
8 could hear it. I mean...

9 Q. Okay. It's -- the emphasis I'm sort of
10 focusing on here is the part that says, "Engaged in the
11 business of producing any agricultural commodity for
12 market in commercial quantities."

13 ***

14 MR. MONAHAN: For clarification, Mr. Moody,
15 what statute's that from?

16 MR. MOODY: It's RCW 15.65.020, Sub-Section
17 10.

18 MR. MONAHAN: What's the title? What's the
19 subject matter of the...

20 MR. MOODY: It's in the definition section.
21 It just defines the word, producer.

22 MR. MONAHAN: Definitions of what?

23 MR. MOODY: Agricultural producer.

24 MR. MONAHAN: I'm trying to figure out what
25 the subject matter of the statute is. Is it a tax

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1 statute? Is it a withholding statute?

2 MR. MOODY: It's the Washington Hop Commission
3 Law.

4 MR. MONAHAN: Thank you.

5 MR. GASSELING: Well, all I know is that that
6 wording is used in the Mint Marketing Order. It's been
7 accepted and operational, and the growers in part of that
8 are in the State of Washington, so I have to believe that
9 the definition that we've got here is acceptable. But
10 the critical thing is is I think you're alluding to the
11 commercial production, and you're making the assumption
12 just because I made a decision not to astring [ph] either
13 a portion or all of my acreage due to whatever
14 circumstances, somehow I'm not engaged in commercial
15 production of that product. I mean, I have the
16 proprietary interest in that. I have all of the expenses
17 in it. I have all of the facilities. I have all of the
18 infrastructure, and so I am still engaged in the
19 commercial production of hops.

20 And so I think there's theoretically, if you
21 take to where you want to go under the marketing order,
22 if I had hops in the allotment, this is getting into
23 another area, and decided not to -- which is one of the
24 options, decided not to grow and use that product, I
25 wouldn't be commercially in the business of hops. And

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1 that's not the case.

2 MR. MOODY: Okay. Thank you very much, Mr.
3 Gasseling. I appreciate it. Nothing further, Your
4 Honor.

5 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
6 Moody. Additional questions for Mr. Gasseling. Mr.
7 Carswell.

8 MR. CARSWELL: Yes.

9 ***

10 BY MR. CARSWELL:

11 Q. Mr. Gasseling, I just actually don't have
12 any questions about this. I will about -- have some
13 questions about -- and when I say this, I'm referring to
14 991.06 or other procedural provisions. I will have some
15 questions about 991.50 and subsequent provisions when we
16 get into next week.

17 I did, however, want to address a comment you
18 made earlier about a witness that we had yesterday here,
19 Mr. Wilmunster. That's spelled W-i-l-m-u-n-s-t-e-r, and
20 his first name was John, J-o-h-n. I believe I heard you
21 mention...

22 ***

23 ADMINISTRATIVE LAW JUDGE: I think his name
24 Jon was J-o-n.

25 MR. CARSWELL: Okay. Then I've got it

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1 misspelled here. I apologize.

2 ADMINISTRATIVE LAW JUDGE: And I think he
3 said his spelling was W-e-i-l-m-u-n-s-t-e-r.

4 MR. CARSWELL: I'm being told you are quite
5 correct, Your Honor.

6 ADMINISTRATIVE LAW JUDGE: All right. Go
7 ahead.

8 ***

9 BY MR. CARSWELL:

10 Q. And you mentioned or you stated that you
11 didn't believe his testimony yesterday that by having to
12 acquire base that he would be put out of business. I
13 would ask you, if you could, to explain the basis or
14 bases for that opinion.

15 A. Well, I didn't say that exactly. I said
16 that it's hard to make that comment when you don't have
17 any indication of what that potential additional
18 allotment base might cost you or how much additional
19 allotment base you might need or what that allotment
20 program might do to the market, affect the market
21 itself. I mean, and I said this is my opinion. I don't
22 believe that you can just make that blanket statement
23 without all of those major factors. I -- if additional
24 allotment base costs me \$1, in my operation we wouldn't
25 go broke. Now, \$2 we might go broke but not \$1. So

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1 with all of those, you're making -- my point was he made
2 a statement that was made without any knowledge of what
3 those additional costs, if any, might be.

4 Q. So what you just indicated is that if
5 base prices were set at a certain amount, at a high
6 amount, it's hypothetically possible that it could make
7 some growers go broke?

8 A. Well, hypothetically it might, but you
9 have to understand that the committee took tremendous
10 time and effort to develop a program, and I think Mr.
11 Carpenter alluded to it earlier, that would put
12 substantial additional base in the front end to
13 alleviate as much as you possible can the potential for
14 that base in the beginning having value, to eliminate
15 the impact that Mr. Weilmunster was alluding to as much
16 as you absolutely could.

17 Q. But putting the allotment at that level,
18 though, aren't you also creating a situation where to
19 reduce the supply of hops, you would have to drastically
20 reduce the amount of salable quantity, thus increasing
21 the need for base?

22 A. Not necessarily. You have, and there'll
23 be testimony, but the way the calculation is there's
24 excess base out there even with a cut in allotment.
25 There would be excess base out there. Now, I can't say

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1 what the cut would be or if there would be a cut.
2 That's up to the committee, and so depending on what the
3 committee did, it would directly have an effect on the
4 allotment base available, but the calculation is that
5 there will be -- and the premise that the committee went
6 on that there will be substantial base available for
7 growers who need it. And based on bona fide effort and
8 all these other issues we'll get into, the grower that
9 isn't using it is going to lose it.

10 Q. Do you believe that base will have some
11 value, any value?

12 A. When?

13 Q. After a cut, after the setting of the
14 allotments and a presumable cut. I mean, you have to
15 cut, or you're not going to cut, you're not going to
16 regulate production to prevent what you believe is
17 oversupply. Correct?

18 A. Well, if you take the premise that Mr.
19 Smith put forth that we are relatively in balance given
20 the situation, and that we don't produce any more than
21 what we did this year from next year, we could
22 potentially stay in balance, then the amount produced
23 was the right amount. And so most of the cuts in many
24 instances are already there, and the percentage cut
25 would not take away from the production that's there.

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1 Q. When you're setting the base, though,
2 you're taking the best year over the last five years for
3 each grower. Correct?

4 A. Yes.

5 Q. So...

6 A. Well, it's actually more than that right
7 now. It goes to 2002.

8 Q. Six years?

9 A. Yes.

10 Q. So you take the best year of each grower,
11 you're going to have a base that's going to be higher
12 than last year's production, aren't you?

13 A. You will have an inflated base. Yes.

14 Q. So it would -- you presumably would have
15 to have a cut in that base to even go back to this
16 previous year's level. Isn't that correct?

17 A. There would have to, you know, most
18 likely have to be a cut, but that, again, comes down to
19 the specific situation that the committee would address.
20 What this committee, the Proponent's Committee tried to
21 do is put the framework together for the administrative
22 committee to work under and to set it up so that it's a
23 two-fold situation. We all understand that the big
24 problem is in the alpha acid side. There was, after
25 much discussion there was an alpha factor involved for

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1 the aroma, so the aroma side would not get affected by a
2 cut in the saleable.

3 But because of that it would allow for excess base out
4 there in the front end, which we fully believed there
5 will be substantial amount. Growers will have to either
6 use it or get rid of it, so the premise we're going
7 under is that it will have very little, if any, value in
8 the beginning, especially if there's no market.

9 Q. Presuming that -- let's presume for a
10 second since I'm not going to get you to state that you
11 think base is going to have a value, I think Mr. Smith
12 probably did that yesterday, but we'll let the record
13 show whether he did or didn't.

14 A. No, and let me clarify. Ultimately, if
15 the -- this is my belief. Ultimately, if the marketing
16 order works properly...

17 Q. Uh-huh.

18 A. ...by its nature the allotment base will
19 have some value. If it doesn't work properly, it'll
20 have zero value.

21 Q. And there will -- if it has value, then
22 presumably there will be people who are acquiring base.
23 Is that -- and paying for base. Is that accurate?

24 A. If it has a value, and I acquire base,
25 I'll have to pay for it.

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1 Q. Now, someone who's -- presume that
2 there's a grower. Let's take an Idaho grower. Let's
3 take one of the Idaho growers who were here yesterday.
4 Let's take Mr. Weilmunster, and let's presume that he
5 has to acquire base under the marketing order. Just
6 from a philosophical standpoint, why would an American
7 grower who is growing hops, why should he be forced to
8 pay someone who's selling his ability to grow hops money
9 just to be able to grow hops?

10 ***

11 MR. MONAHAN: Your Honor, I'm going to object
12 to the form of the question on a couple of bases. I
13 don't think we're here to discuss philosophies. I would
14 submit it's argumentative, and I think most importantly
15 we've addressed this philosophical issue in detail in
16 the three hour cross examination of Mr. Smith.

17 MR. CARSWELL: Not with this witness, Your
18 Honor.

19 ADMINISTRATIVE LAW JUDGE: Philosophy does
20 have a lot to do with the outcome of this proceeding,
21 but the question is in some ways an argumentative one,
22 but nevertheless, I believe this witness is capable of
23 fielding it. The fact that it may have been answered by
24 a different witness does not preclude counsel from
25 asking this witness.

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1 But would you repeat your question and then
2 I'll ask Mr. Gasseling to answer it.

3 ***

4 BY MR. CARSWELL:

5 Q. Why should an American hops grower who is
6 opposed to the Hop Marketing Order be forced, if,
7 indeed, he is required to keep his production level to
8 acquire base, and he's going to have to pay for it, why
9 should he have to pay base just to grow hops in this
10 country?

11 A. Well, first of all, we have a process, a
12 legal process that we are going through right now, and
13 when this part of the process is completed, the growers
14 hopefully will have the opportunity to vote. If the
15 majority as it's set up in the statute vote in favor,
16 then this marketing order will be implemented. And if
17 it is implemented and some people are producing more
18 than their annual allotment, they have an option to
19 produce less, just as somebody who's producing less has
20 the right to produce more. They have a right through
21 the procedures to acquire allotment. They have the
22 right to lobby the committee to increase the saleable.
23 Nobody has to buy allotment. You make a choice based on
24 your specific situation.

25 If it were put into effect, and let's take the grower

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1 from Idaho, if having to buy additional allotment would
2 put him out of business, I guess he wouldn't buy the
3 additional allotment.

4 Q. And he would sell -- and then he would
5 sell less hops if he needed that allotment to maintain
6 his production, and as he testified yesterday, that
7 would put him out of business.

8 A. That's an economic decision he has to
9 make. He has the ability to transfer his base to
10 somebody. He has to make his own economic decision. I
11 can't make that for him, but we have -- you cannot...

12 Q. I think you're trying to make that for
13 him by getting this order passed.

14 A. No. Well...

15 ***

16 ADMINISTRATIVE LAW JUDGE: Mr. Carswell, don't
17 cut him off, please.

18 MR. CARSWELL: Yes, ma'am.

19 MR. GASSELING: What we have is a process. We
20 as the committee have put together a proposal with the
21 input of the industry and Idaho's input to try to be as
22 absolutely fair as we can be. Now, given that, I don't
23 know of any type of program, a mandatory program, that
24 is fair to everybody. There is going to be some people
25 have a certain situation that's not going to benefit

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1 them. But it's not just what we're talking about there.
2 It's everywhere. I don't necessarily agree with minimum
3 wage in Washington, but you know what? It may put me
4 out of business next year, because it's going up. Is
5 that fair? Should the state be about to put me out of
6 business?

7 So it's not a situation where we're focusing
8 on one particular area. It may well be that one person
9 might go out, and this is hypothetical, and two or three
10 might have the ability to survive. I don't know, but
11 all I can say is we've made a very conscious effort to
12 address all these concerns, whether they're brewery
13 concerns or growers concerns. And this input came from
14 all of the growers, Idaho included.

15 MR. CARSWELL: Mr. Gasseling, thank you. I
16 really do apologize for cutting you off a minute ago.
17 Thank you, sir.

18 MR. GASSELING: No problem.

19 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
20 Carswell. Additional questions for Mr. Gasseling? All
21 right. I'll entertain Government questions at this
22 time. Ms. Deskins. Ms. Finn.

23 MS. FINN: Thank you.

24 ***

25 BY MS. FINN:

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1 Q. In looking at the definition, starting to
2 read through the definitions and stopping on hops and
3 hop products, I think that perhaps we need to get some
4 information on the record and as well as for the people
5 in this room that don't know a lot about how hops are
6 processed. It would be helpful to get some information
7 on the harvesting and processing of hops and when do
8 hops become -- turn into alpha acid. Looking through
9 the definitions, too, I did not see a definition of
10 alpha acid, so some clarify on exactly what alpha acid
11 is would be helpful.

12 So if you could perhaps describe perhaps from harvest
13 time to what happens to the hops and when they are
14 converted into alpha acid.

15 A. Okay. First of all, the growing season
16 starts in early spring. The hops are twined. They grow
17 with twine that goes up on a 20-foot trellis. The hops
18 grow through the season, and there are cones that
19 develop on the plant. Some liken them to a, what do you
20 call, pinecone. Thank you. And they're, depending on
21 the variety, they become ready for harvest the early to
22 mid part of August, from the 10th on.

23 And these hops are harvested through -- most growers
24 have stationary picking facilities that actually strip
25 all of the cones and leaves off of the vine, and then

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1 the leaves are separated, and the cones are then sent
2 into a large dryer, where there are what we call kilns.
3 There are other growers who have portable picking
4 machines that actually strip the hops in the field, and
5 then that product is taken to a stationary machine, and
6 the leaves are separated so that we end up with nothing
7 but a hop cone.
8 Then those hop cones, as I said before, go into the
9 drying kilns. Usually they're floors that are 8 to 10
10 feet off of the ground, and they have -- they're -- most
11 of them are 32 by 32, but there are different sizes.
12 That's the size of the kiln floor. There's a slated
13 floor. Burlap is laid over the slated floor, and the
14 hops are laid on top of the burlap anywhere from 30 to
15 40 inches deep.
16 There's a large burner and fan that blow hot air
17 underneath the kiln floor. Temperature is usually 135
18 to 140 degrees, and the hops are dried for anywhere from
19 eight to 12 hours, depending on the kiln floor depth and
20 the type of hop that you're picking. Those dried hops
21 are then taken off the kiln floor, in most cases
22 mechanically, and cooled for a period of 12 to 24 hours,
23 and then they are put into a press, a hop baler, that
24 bales those bales in a standard-sized bale with burlap,
25 200 pounds.

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1 We do have growers that take those hops prior -- from
2 the cooling floor and actually have pelletizing
3 facilities where they make pellets right at their
4 facility. But the standard practice is that the hops
5 are baled.

6 The baled hops are then sent to, depending on what the
7 situation is, if they're sold, they go to the buyer. If
8 they're not sold, some growers have -- make the decision
9 that they will process those products further, those hop
10 bales. They'll put them into either pellets or extract.
11 But from the point they're baled is the point where they
12 will ultimately change the raw hop form, and most of the
13 dealers have pelletizing facilities and extraction
14 facilities where the hops are pelletized and or
15 extracted. The extract -- the pelletizing process is
16 basically where you take the hops and you send them
17 through a dye and you make pellets just like rabbit feed
18 pellets.

19 Extract, it's kind of a washing process where
20 you're actually washing out the resins out of the hops.
21 Depending on the type of extraction it can be from a
22 yucky black to a beautiful green color, depending on
23 what type of extraction you use. But that extraction is
24 -- are the resins, the lupulin, which is the yellow
25 section of the cone itself. Those extraction resins

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1 then can be blended, reduced, changed to meet
2 specifications when it comes to selling the product to
3 the brewery.

4 Also, raw hops can go directly to the brewery
5 in the bale form, and there are breweries that request
6 that the hops be pelletized. There's a concentrated
7 pellet and a standard pellet. Standard pellet just is
8 -- goes through as such. A concentrated pellet, some of
9 the vegetable material is take away so you have a more
10 concentrated, less vegetable material and more resin
11 material.

12 And those products are then the products that
13 the end user, the brewery uses depending on, as I think
14 you heard earlier, depending on formulas that the
15 breweries have and have much bittering unit, how much
16 this and that, and there's other flavoring components
17 other than just the bittering value in hops. So
18 depending on what the brewery wants, they may add hops
19 for not just for the bittering aspect but for -- to
20 impart a different aroma or different bouquet off of the
21 final product.

22 Q. So the grower is responsible in most
23 cases. He -- up to the baling of the hops, before he
24 loses control of the hops or sells them or gives them to
25 his handler?

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1 A. Yes. When -- and it was spoken to a
2 little earlier. There's a grower number that has to go
3 on every bale so it can be tracked, and then the
4 individual growers, depending on how many bales they
5 grow, will divide them into specific lots. The state,
6 you have to have a grower number on there so the state
7 can inspect them for leaf and stem, and it also allows
8 for the ability to know what crop year those hops were
9 grown in.

10 Q. So hops are inspected?

11 A. Yes, they are.

12 Q. Is it a Federal inspection?

13 A. State inspection for leaf and stem, and
14 also you can request a brewing value analysis to be done
15 on those hops, which will give you -- and it'll give you
16 an alpha acid percentage, it will give you a beta acid
17 percentage, and it'll give you a brewing value
18 calculation, the total brewing value, and you can also
19 get a moisture reading also on those hops if you wish.
20 But we are paid in many cases a premium for the lower
21 leaf and stem, so you have to have some kind of an
22 impartial third person to verify that.

23 Q. And are growers generally paid on the
24 basis of their bales, the number of bales?

25 A. Traditionally hops have been sold on the

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1 pound of hops. Now they're sold on the pound of hops,
2 they're sold on the pound of alpha, they're sold on the
3 kilo of alpha. So there's a large, you know, area of
4 how actual sales are made now, but traditionally, the
5 traditional grower sells so much per pound of raw hops.

6 Q. Would it be safe to say that in the
7 definition of hops and hop products that loose-packaged
8 or baled would be still considered hops, and then when
9 it's pellets, powders, oils, and extracts, you look at
10 it as alpha acid?

11 A. Well, I think if you're asking me, it's
12 -- which you are, I think that you have baled hops and
13 pellets packaged, and I think maybe I should explain the
14 package trade. It's -- it used to be a relatively large
15 trade, but it -- and it went to the craft breweries, and
16 what it was was these little tiny packets that were
17 about 2, 3 inches square that were pressed so hard it
18 was like a brick. Usually it was pretty, how should I
19 say nasty old hops. They didn't smell very good either,
20 but -- and they sent them to the home brewing trade.
21 And so when you see that package, that's what that
22 refers to. Loose hops, you know, there's some trade in
23 that, but -- so I would say loose hops, packaged hop,
24 baled hops, and pellets are basically in the raw form,
25 because even with pellets it's actually that raw form.

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1 You take the oils and extracts and those type of things.
2 Then you've moved into the process form.

3 Q. And I would assume that when they're in
4 pellets, powders, oils, and extracts they're in a more
5 storable form. They may have longer shelf lives than
6 the -- just baled hops?

7 A. Yes. They -- baled hops for the most
8 part, depending, again, on variety, there are varieties
9 out there that deteriorate very fast and very quickly
10 and need to be extracted almost immediately. There are
11 other varieties that last a long time. So it depends on
12 what variety, but the more stable form you put that
13 product in and then that starts, you know, the bale is
14 more stable than the raw, the loose hops. Pellets are
15 more stable because they're put in packaging that slows
16 down the oxidation, and oxidation is what is the big
17 problem with hop storageability. So any time you can
18 put it into a form that cuts oxidation, you've cut down
19 the deterioration of the hop. So pellets would be the
20 next phase and then, of course, the best phase would be
21 in an extract form where it's, in fact, in a sealed drum
22 with no, virtually no oxidation.

23 Q. Can you give some general timeframes of
24 the shelf life, say of pellets?

25 A. Well, you know, I'm not an expert in that
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1 but if pellets are in the right form, you know, they can
2 last a few years. Extract can last much longer.

3 Q. So extract can last longer than a couple
4 of years?

5 A. Yes.

6 Q. Thank you. That's -- I really appreciate
7 that information.

8 A. You're welcome.

9 Q. Now, on Section B, paragraph B of that,
10 you said that that's where it's discussing alpha acid,
11 hops, and aroma hops. You said that's in there for
12 informational purposes only. Are the terms aroma hops
13 and high-alpha hops to your knowledge used throughout
14 the order at all, through the proposed order? Or is it
15 just discussed in -- on the basis of a percentage of
16 alpha?

17 A. You know, I don't think it's used in any
18 capacity in any other area. I think what happened when
19 this was -- the original draft of the first proposal
20 included a separation of alpha hops and aroma hops. And
21 so we had to make -- there had to be a determination and
22 an explanation of what alpha hops were, alpha acid hops
23 and or high-alpha hops and aroma hops, and what they
24 did, this was left in there. It doesn't affect anything
25 other than it tells you when -- gives you the

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1 information that when we're talking about alpha acid
2 hops what those are used for and aroma hops, what
3 they're used for. But originally it had to do with the
4 separation of the two types of hop.

5 Q. Okay. Under production area I know that
6 this was touched on some yesterday, but I was wondering
7 if you could speak to why California was included in the
8 production area.

9 A. Well, there, to my knowledge there is a
10 limited production down there, but even more important
11 there is the infrastructure down there. It has been in
12 the past few years a viable hop-growing area. It has
13 the ability to be a viable hop-growing area again,
14 because, as I said, the infrastructure is still there.
15 There's still building down there. There's still piles
16 of hop poles down there and so forth.

17 So to not include that, given the fact that it
18 has been and very likely could be expanded, would
19 -- just doesn't seem to be reasonable.

20 Q. Do you know how many growers there are
21 there now?

22 A. I think there's one.

23 Q. Is he or she, is he or she familiar with
24 -- does he know that there is a potential marketing
25 order?

1 A. Yes, I think that he's on the opponent's
2 side. He was one of the -- yeah. The opponents. He
3 was one of the members of the original Hop Marketing
4 Order.

5 ***

6 ADMINISTRATIVE LAW JUDGE: All right. Let's
7 change the tape at 11:13.

8 ***

9 [Tape 2 Side 2]

10 ***

11 ADMINISTRATIVE LAW JUDGE: All right. We're
12 back on record at 11:14. Ms. Finn.

13 MS. FINN: Thank you.

14 ***

15 BY MS. FINN:

16 Q. If I could now move to the definition of
17 producer, do you think at some -- that perhaps if a
18 marketing order is implemented and a committee is set up
19 that the group would be interested in setting forth some
20 more specific parameters on the voting requirements and
21 eligibility for voting?

22 A. You know, I think the committee would
23 definitely be open to that suggestion. We've worked on
24 it so long it's pretty clear to us, you know, I mean,
25 but it's -- if it can be cleaned up some, I don't think

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1 that -- and I'm speaking just strictly for me, but I
2 don't think the committee would have a problem with
3 that, because we know what the intent of these
4 provisions are, and if it doesn't quite get there, then
5 we would be open to tightening it up.

6 Q. And did you consider putting a proviso in
7 there that said rules and regulations could be
8 recommended by the committee and approved by the
9 Secretary to further clarify this information?

10 A. That could be done. I mean, we never
11 -- we didn't think about that part of it or we might
12 have put it in. So, but I mean, that's a good
13 suggestion, and I think the committee would be willing
14 to address that.

15 Q. Just for the record what is common
16 banking?

17 A. My interpretation of common banking is
18 that if you have a situation where you have a father and
19 a son, and the son and the father -- the son is farming
20 but his, all of his financing and all of his banking is
21 part of the whole operation and coming from a line
22 that's set up specifically for the overall operation,
23 then it's not a separate banking situation. It's common
24 banking. It's basically one grower entity. And that's
25 just one of the criteria, because that does happen, and

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1 again, in the Mint Marketing Order they have specific
2 criteria so that if you want to become a new grower you
3 can't just say I'm a new grower. I can't just say my
4 son, Jason's, going to be a new grower so he wants base,
5 and then I own the land, I farm the land, I have the
6 equipment, I don't charge him anything, I do all the
7 financing, and really all it is is kind of a cover for
8 my operation. That's what this is intended to cover.

9 Q. Are there reasons other than the
10 eligibility to vote for committee membership that a
11 producer might want to segregate his business entities
12 and have separate business entities for separate
13 purposes?

14 A. Yes. There could be, and I don't think
15 we have any problem with that. That's not the issue. A
16 grower can have as many entities depending on his
17 business and how he has it set up. We're not -- I don't
18 think the committee is trying to say that you can't have
19 multiple entities. What we're saying is it's not fair
20 to have multiple entities and be able to utilize those
21 multiple entities when you control all of them to gain
22 voting power.
23 So there's no question you can have, and there's
24 advantages to having multiple entities in certain
25 business situations.

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1 Q. All right. If I can move to the
2 definition of handle now, I'm not sure where to start.
3 Hold on one sec. Are there brewers, well, can brewers
4 -- are there brewers that are producers?

5 A. Well, I would say, and, again, I don't
6 know the particulars. Just from what I understand there
7 is a situation where a brewer has a subsidiary or some
8 arm of their overall operation that is a farm, a hop
9 farm.

10 Q. Are there brewers that have processing
11 facilities within the production area?

12 A. Domestic brewers or foreign brewers?

13 Q. Well, domestic brewers.

14 A. I'm not aware of any domestic brewer that
15 has a processing facility in the growing area.

16 Q. Now, you said there are, I'm guessing
17 like four major handlers. Well, two major handlers and
18 maybe two smaller handlers that you know of. I'm trying
19 to get a sense of how many other handlers there will be
20 in total, and you said some producers who, producers who
21 transport their hops outside the production area say to
22 a foreign brewer, they would become the handler.

23 A. Well...

24 Q. Is that correct?

25 A. ...if you're asking for a number, I would

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1 say potentially you would have the potential for the
2 same number of handlers as we have growers. So if you
3 have 50 or 60 growers, you may -- you could have 50 or
4 60 additional handlers because the way it's set up, if I
5 sell directly to a brewery, I am the handler,
6 irregardless of whether it's domestic or export. I
7 become the handler. I may sell all the rest of my hops
8 to a handler as a producer. Then I'm a producer. I
9 sell them to that handler. That handler is the handler.
10 I'm still -- I'm just the producer, but whenever I sell
11 directly to a brewer, I become the handler, and I'm
12 responsible for the reporting and everything else that
13 goes along with it.

14 Q. Do you know if the producer, these
15 producers know that if this marketing order is
16 implemented that they will be considered handlers and
17 subject to the regulations under the order?

18 A. Do I know that everybody is aware of it?
19 I think that the majority of the industry is. I think
20 that there's many, many in the industry that are
21 operating as handlers right now in more sense than just
22 selling to the dealers. There are people that sell to
23 -- or, you know, to breweries and have their own
24 business. So I would think that a number of them
25 definitely would, but I can't say that everybody truly

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1 understands this part of it.

2 Q. So potentially the majority of the
3 producers could also be considered handlers.

4 A. Well, I don't know whether it would be a
5 majority or not, because I don't know how many growers
6 actually fall under that category. All -- the growers
7 who sell as a producer to a handler would not fall under
8 that category. It's the only one -- it would be, the
9 only ones that would fall under that category would be
10 the ones that sell directly to the brewery. They become
11 the handler.

12 ***

13 MS. FINN: I think that's all I have. Thank
14 you.

15 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.
16 Finn. Yes. Mr. Broadbent. Thank you. Mr. Olson.

17 ***

18 BY MR. OLSON:

19 Q. With regards to hops and hops products,
20 do all hops have alpha acid?

21 A. Sometimes when you deliver them the
22 dealers say they don't, but for the most part I think
23 they, yes, they would.

24 Q. You had mentioned that the early
25 proposal, had an early proposal in which alpha and aroma

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1 had been separated. What was the rationale about
2 dropping that?

3 A. Well, in the beginning there were many,
4 many suggestions. Some suggestions were to eliminate
5 the aroma side completely, and those were discussed, and
6 there were numerous pitfalls to doing that and quite a
7 concern in the grower community that that could create a
8 real problem for the aroma grower in a two-fold
9 situation. Number one, if the alpha acid side got into
10 balance, that the alpha acid growers would cannibalize
11 the aroma growers. The other side of the coin was that
12 the alpha acid growers could -- or the aroma growers
13 could, in fact, be growing aroma, have a relationship,
14 and then for whatever reason, and that relationship be
15 with a brewery, and for whatever reason tastes change,
16 demands change, and all of sudden that customer they
17 have a relationship with decides to change to an alpha
18 acid hop. That grower would be totally froze out of
19 doing anything, because they couldn't switch, other than
20 to have to go out and buy into the alpha side.
21 So that didn't work. And then we talked about two base
22 allotment systems, where, in fact, it would be a similar
23 situation to the Mint Marketing Order, where we had
24 -- mint has a native and a scotch, and so we would have
25 an alpha side and an aroma side, and we would set a

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1 salable on each one and but then it came down to, well,
2 people wanted to have some kind of a formula to switch
3 back and forth. And then if you switched one way, you
4 would lose allotment. If you switched the other way,
5 you gained it, and quite frankly it was an absolute
6 nightmare to try to figure out. And ultimately it
7 didn't get us to the -- to what we really wanted to
8 control.

9 And so then the next thing that came along was this
10 proposal, and I can tell you, I was an advocate in the
11 very beginning of a two-base proposal. I just said
12 that's the only way it can work. It's the only way that
13 makes sense, and after considerable discussion and
14 figuring out all of the pros and the cons it became very
15 apparent to me that that just didn't work, because it
16 didn't allow for the free market to work underneath the
17 marketing order, and I think that you'll probably hear
18 more about that later. But this marketing order, one of
19 the goals we tried to achieve is, yes, there's
20 regulation. There is regulation, but to allow as much
21 individual grower flexibility underneath that umbrella,
22 so that growers can make the decision of what they grow,
23 how much they grow under that umbrella, and what they
24 sell it for. And they can make the determination of
25 whether they want to move to alpha hops or to aroma

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1 hops.

2 So when all of this came out, it just -- and we asked
3 for other suggestions from the trade, and nobody could
4 come up with a better solution to this situation other
5 than to figure out an equitable way to start it, and
6 then to allow the industry to operate freely underneath
7 that with regards to whether it was alpha or aroma.

8 Q. Are alpha and aroma hops substitutes in
9 the market place?

10 A. Yes and no. And the reason I say that is
11 because at the end of the day they all have a bittering
12 value. They all impart bitterness in the final product,
13 and I'm not a brewer, so there may be brewers out there
14 that will contradict, but from my experience in the
15 business whether you use aroma hops or alpha hops, alpha
16 acid hops in your formula, they each impart a certain
17 amount of bitterness, because they do have alpha acid,
18 even the aroma hops have some alpha acid.
19 So what you're talking about is coming up with a
20 combination of bitter hops and aroma hops that the total
21 bitterness of the two is what you want, and the aroma
22 characteristic, which imparts the bouquet, the flavor,
23 all of the things other than the bitterness, you know.
24 If you smell beer, some beers smell better than others
25 or worse than others, you know, or different, I guess.

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1 Not better or worse but different, unless you have a
2 skunky one, then it smells bad. But -- so you have this
3 ability to manipulate the formula, but ultimately at the
4 end of the day it's the amount of bittering hops that
5 take place or really are the critical issues.
6 So, yes, they are not interchangeable from the
7 standpoint you don't use a bitter hop to give you, let's
8 say, the bouquet that a cascade hop would. But that
9 cascade hop or that Willamette will, in fact, put
10 bitterness in your product.
11 So they do kind of intertwine.

12 Q. Okay. One last question. Lupulin...

13 A. Lupulin.

14 Q. Under the definition you have loose,
15 packaged, baled, and pellets, and you've previously said
16 that that is the raw form. Powder, oils, and extracts
17 would be processed form. Where does lupulin, sorry...

18 A. Yeah. Lupulin.

19 Q. ...that L word.

20 A. Yes.

21 Q. Where does that fit in in this
22 definition, and is it in a form that could be traded to
23 anybody who sold, bought, whatever? Where does that fit
24 into this definition with those other forms of hops?

25 A. Well, I think the reason that that's

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1 included in there is that you can actually shake the
2 lupulin out of the raw product. You see it in picking
3 facilities when you're picking, when you're drying.
4 Lupulin does get knocked out of the cone itself. It can
5 be a beautiful yellow resin type material that's laying
6 on the floor or underneath a conveyor, or it can be
7 caked up on your belts, and it can -- but it's the pure
8 lupulin which has the resins and the alpha acid in it,
9 and it can be utilized in -- added in to be -- extract
10 the product or whatever.

11 So I don't know how much of that happens, but it's one
12 of those things that cover them all just in case,
13 because really what you're doing in some of these
14 concentrated pellets you're actually shaking out the
15 lupulin and taking away more of the vegetative matters,
16 so you're actually in a way doing that to a degree.
17 So...

18 Q. Thank you. Moving to handle, 991.08, it
19 says, "To prepare hops for market." Could you expand on
20 that a little bit?

21 A. That would be to put it in a form that it
22 would go to the end user. Could be pelletizing,
23 extraction, recompressed bale. It could be any of those
24 things.

25 Q. Would baling on the farm operation be

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1 considered preparing for market?

2 A. No, it would not.

3 ***

4 MR. OLSEN: That's it. Thanks.

5 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

6 Broadbent [sic]. Ms. Finn.

7 MS. FINN: I'm sorry. I forgot to ask -- I
8 had a couple of questions about your definition of new
9 producer.

10 MR. GASSELING: That's actually the
11 Government's definition. Sorry.

12 ***

13 BY MS. FINN:

14 Q. Was this put in here because there were
15 concerns that there would be some growers in the
16 industry if this marketing order were implemented and
17 that would not have an opportunity to obtain base?

18 A. That was the concern of the Department.
19 I think by Mr. Weilmunster's testimony, he's the newest
20 and latest grower, and he was a 2000, grower or 2002,
21 grower, so it -- we didn't think it was as much an
22 issue, but there was the concern on the Department's
23 side that there could be a grower come in in 2003,
24 produce hops, and he would not be eligible for a base
25 allotment. So this clause was put in there to take into

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1 account the remote possibility that there was a bona
2 fide new producer in 2003, and that producer would, in
3 fact, be eligible for base allotment.

4 Q. Using the date 2003, was that in
5 anticipation of a marketing order being in effect in
6 2004?

7 A. Yes.

8 Q. So in the event that a marketing order is
9 not put in place in 2004, but is put in place in say
10 2005, would you want to add another year to that to
11 cover that...

12 A. No.

13 Q. ...grower?

14 A. No. I think at some point we have to
15 -- and this is my opinion. I think at some point the
16 more you dilute the process as far as putting specific
17 rules and regulations and expectations out there, it
18 opens it up for potential of exploiting what we're
19 trying to do, and I think the critical thing is that we
20 don't do that. I understand why the Department was
21 adamant about that. I had no problem, because we know
22 that basically there are no new growers. But if you
23 start to say I would entertain doing this another year
24 or two years or whatever, I think you open yourself up
25 for all kinds of potential games that do nothing but

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1 actually hurt the industry.

2 Q. So anyone who grew hops in 2004, if an
3 order was implement in 2005, would not be eligible for
4 base?

5 A. Well, the way it reads right now, that's
6 correct. I guess my point would be that my feeling is
7 we're going to -- we're either going to have an order.
8 This order will either be in effect for next year, or we
9 won't have an order. If that happens that it goes
10 another year, then I guess it comes down to the
11 situation that do we change that 2003, to 2004? Do we
12 leave it the same? Does the Department feel that it
13 would -- it's beneficial to change it? I think we'd
14 have to cross that bridge when it happens.

15 Q. It says that a person who has previously
16 been granted a hop commission grower number or an
17 allotment base would not be considered a new producer.
18 Would it be possible for a grower to have been assigned
19 a grower number, say ten years, 15 years ago, through
20 -- down through his family, and still be a new producer
21 in 2003?

22 A. Where -- which one were you reading?
23 Where were you reading so...

24 Q. Oh. The second sentence in that
25 definition. It says the term, "new producer

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1 specifically excludes any person who has previously been
2 granted hop commission grower number." I was just
3 wondering if it was possible for somebody to have a
4 grower number and not have grown for years and then
5 decide to grow hops in 2003.

6 A. Well, the way this reads that if they've
7 been given a grower number previously, they're not
8 considered to be a new producer.

9 Q. Okay. Do you know if the order, proposed
10 order is intended to regulate hops or alpha acid?

11 A. Alpha acid.

12 ***

13 MS. FINN: Okay. Thank you.

14 ADMINISTRATIVE LAW JUDGE: Dr. Hinman.

15 DR. HINMAN: One production question.

16 ***

17 BY DR. HINMAN:

18 Q. On the -- we've heard that, previously,
19 that the hops -- it's a pretty good plan that bears in
20 the first year. Is there a generally-accepted standard
21 by which you say it reaches maximum production? Hops in
22 general. Hops plant.

23 A. I would say that in the State of
24 Washington it's probably the only place in the world
25 that you can actually get a full crop in the first year.

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1 In the State of Oregon usually it's depending, again, on
2 variety. It's one to two years to get into full
3 production. And I think you heard from Idaho that that
4 same situation seems to prevail there, that it takes at
5 least a year before they can get -- a year or more
6 before they can get up to full production.
7 And that's the advantage that the whole United States
8 has. In other areas of the world it even takes, you
9 know, it may even take longer.

10 Q. And I have some questions related to the
11 marketing which you described in some detail. Make sure
12 I fully understand the distinctions and categories. You
13 talked about bales, loose hops, pellets, and extract.
14 Can you distinguish a little bit between bales and loose
15 hops?

16 A. Well, there's very few loose hops sold
17 into the trade anymore. There was years and years ago
18 there were outlets for loose hops. There still is some.
19 In fact, I think that they had some fresh hopping
20 festival in Yakima here just recently, and they used
21 fresh loose hops. Green hops and put them in. I guess
22 it was pretty good stuff. But, I mean, that would be a
23 loose hop thing, but it's a very small part of the
24 overall thing. The major areas are bales, pellets,
25 extract, and those products.

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1 But it's one of those things that when we wrote this,
2 you want to cover everything, because you never know
3 what might change down the road.

4 Q. You've heard, you know, leaf hops, cones,
5 and bales. Is that -- are they all equivalent? Is that
6 -- a bale consists of leaf hops?

7 A. Yes.

8 Q. Okay. And getting back to the other
9 categories there, a bale is generally one variety. Is
10 that correct or no?

11 A. Well, it's supposed to be. You're
12 supposed to label on the bale what variety it is.
13 Sometimes I don't know, you know, but yes, normally a
14 bale should be one variety, and a lot should be one
15 variety also.

16 Q. And I think pellets and extract can be a
17 blend of varieties. Or is that not...

18 A. Well...

19 Q. ...the case, or are they carefully
20 distinguished as well?

21 A. You know, and I haven't been on the
22 dealer side for awhile, so I'm going to just speak from
23 how -- what my knowledge -- most processed products,
24 pellets especially, are varietal.

25 Q. Okay.

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1 A. Extract, years ago it wasn't so critical
2 because there wasn't the ability to test the product to
3 tell exactly what variety was in the extract. If you
4 wanted 43 percent alpha extract, you got it, and it
5 might be 43 of this or that. Now many of the breweries
6 request specifically a certain type or whatever of
7 extract, and then there are other breweries that just
8 say I want a certain level of alpha acid in the extract,
9 and it's generic.

10 Q. And generic meaning a blend of many
11 varieties?

12 A. It could be. Or any variety, just that
13 it be that criteria that I've set.

14 Q. Okay. And getting to -- and alpha -- in
15 those terms is the term alpha and bitter equivalent?
16 Alpha hop, bitter hop.

17 A. Yes.

18 Q. And using the word, alpha, we have
19 categories, aroma hop, alpha hop. We heard high alpha
20 and heard, at least previously, super-high alpha. Does
21 every variety -- you say that every variety grown fits
22 uniquely into one of those categories?

23 A. Well, there are some that depending on
24 what the brewery considers it to be, in one case may be
25 a bittering hop, and in other cases it may be an aroma

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1 hop to another user, and in some cases it's used as
2 both. It may have characteristics of both and may be
3 used in that fashion to take care of both areas.

4 Q. Using those same categories, is the cost
5 of production fairly similar or fairly distinct between
6 those broad categories? Cost production at the grower
7 level.

8 A. I think on a per-acre basis probably
9 there are some. There is some variations in any given
10 thing, but on a per-acre basis they're probably pretty
11 close. Now, on a per-pound basis it varies
12 substantially.

13 Q. Okay. And the season average goal price
14 that we listed, you know, we submitted earlier is
15 obviously a combination of all of those. Is there -- in
16 that season average price can you categorize for us
17 which of those categories are higher or lower priced and
18 how -- and when you compute that average price how that
19 all gets folded into a single price that might be -- can
20 you give us more, complete information about how those
21 prices might be distinct?

22 A. Well, for the past number of years the
23 aroma varieties have demanded a much higher price than
24 the bitter hops. That basically is attributed to a
25 major brewer that has made a decision that quality is

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1 the most important to them, and they have paid a price
2 that has been very acceptable to the growing trade,
3 when, in fact, the rest of the industry, the price, if
4 you compare the prices, they're substantially less. So
5 what happens with the -- and I should say there are
6 basically two breweries that have really done that. But
7 what happens is then you take a hop that sells for \$3.50
8 a pound, and you take a hop that sells for 50 cents a
9 pound, and you take the average, well, it skews the
10 average so that you're not really getting a true
11 reading. When you look at and say the price of hops are
12 increasing, well, that may be just basically because
13 there's more of the higher-priced hops versus this low
14 end. It's making it move up, but the overall to the
15 grower is a different situation.

16 Q. I want to ask you a question that's been
17 asked of others about, you know, large and small
18 growers. You've heard the Small Business Administration
19 definition of up to \$750,000 in gross sales would be a
20 small, and above that a large grower. Can you answer in
21 terms of your own operation and if you can answer it two
22 ways; one in terms of just hops, in terms of all
23 agricultural products. Are you small or large?

24 A. Under that definition we would be large.

25 Q. In either -- in just hops alone?

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1 A. Yes.

2 Q. Okay. Yesterday we heard an estimate of
3 the amount of -- for the six growers in Idaho, the
4 number that were small and large based on those
5 criteria. Would you be able to proffer an estimate for
6 Washington state growers?

7 A. In total as far as just -- or just hops?

8 Q. Either way. I guess in terms of hops
9 first. Would you characterize...

10 A. Well, this would be, you know, this is,
11 of course, a guess, but I would think that the majority
12 of the growers in the State of Washington would fit into
13 the large category.

14 Q. Just on hops. Okay.

15 ***

16 DR. HINMAN: Thank you very much.

17 ADMINISTRATIVE LAW JUDGE: Ms. Finn.

18 MS. FINN: I just have one clarifying
19 question.

20 ***

21 BY MS. FINN:

22 Q. The section 991.13, new producer, was
23 that written by a Government official from USDA, or was
24 that written by a representative from the Proponent's
25 Committee in answer to concerns expressed by Government

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1 officials?

2 A. I'll fall on my sword here. It's the one
3 paragraph I wrote in the whole marketing order in
4 response to a stated concern from the USDA.

5 ***

6 MS. FINN: Thank you.

7 ADMINISTRATIVE LAW JUDGE: Ms. Dec.

8 MS. DEC: Your Honor, I was just passing the
9 microphone over.

10 ADMINISTRATIVE LAW JUDGE: Ms. Deskins.

11 ***

12 BY MS. DESKINS:

13 Q. I had a question for you about coops.
14 You had said that part of this definition of independent
15 producer that you struck out related to coops, and that
16 aren't currently any coops in the hops industry.

17 A. Not to my knowledge.

18 Q. Do you anticipate any coops coming
19 around?

20 A. No.

21 Q. Okay. The reason I'm just asking is
22 because if a coop should develop, is there any concern
23 in these definitions of defining it so that you don't
24 have a coop dominate the committee?

25 A. There's no wording in the document that

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1 specifically addresses coops, so it's not addressed in
2 there.

3 Q. Okay.

4 ***

5 MS. DESKINS: I have no further questions.

6 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.
7 Deskins. Any other questions from the Government
8 representatives? There are none.

9 Any follow-up questions from anyone? Mr.
10 Moody.

11 MR. MOODY: Yes.

12 ***

13 BY MR. MOODY:

14 Q. Mr. Gasseling, thank you. I just want to
15 touch briefly on that grower becoming handler situation.
16 If I understand your operation, you're a producer of
17 hops, and you're contracted to a brewer.

18 A. We are a producer. We do sell hops
19 directly to brewers, and we also sell hops directly to
20 the handlers.

21 Q. Okay. And those are -- the '03, hops you
22 sell to brewers are under contract?

23 A. The ones that I have sold to the
24 breweries?

25 Q. Yes, sir.

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1 A. Yes.

2 Q. Okay. And that's one of these forward
3 contracts that other witnesses have testified to?

4 A. Some of it is.

5 Q. Okay. You -- by that you mean you also
6 sell some to brewers on the spot market?

7 A. Yes. I've sold some direct.

8 Q. Okay.

9 A. On the spot market.

10 Q. Okay. So now with respect to the hops
11 that you're selling to brewers under either of the
12 contract or the spot market, is it your testimony that
13 you are the handler with respect to those hops?

14 A. The hops that I sell directly to the
15 brewer I would be the handler. Yes.

16 Q. Okay. And that's -- it doesn't make any
17 difference whether it's a forward contract or on the
18 spot market?

19 A. I don't see where -- why it would make
20 any difference...

21 Q. Okay.

22 A. ...if I sell them whether they're spot
23 hops or contracted hops to the end user. At the time I
24 sell spot hops, they actually become contracted hops.
25 So it's the same.

1 Q. Okay. And is this -- in your
2 negotiations with the growers over the last three years,
3 is -- were growers advised that -- with respect to their
4 direct to brewer sales that they would become handlers?

5 A. Well, I think the discussion has taken
6 place, but I think what's happened is it's become
7 evident because of the situation with regards to taking
8 care of foreign purchasers as well as the craft brewing
9 trade that the most efficient way to handle it is the
10 way we've done it, because we're talking about
11 potentially up to 50 or 60 potential handlers if every
12 grower sold direct versus if we made the end user, the
13 brewer, as been testified here, up to maybe 900, would
14 be just -- it would be such a problem that from keeping
15 track of it that it just doesn't make any sense.

16 Q. Okay. So potentially then to the extent
17 that every grower in the industry had direct sales to
18 brewers, then every grower in the industry could be
19 treated as a -- would be regarded as a handler.

20 A. Yes.

21 Q. Okay. And are you aware of and did you
22 discuss with growers in formulating the order that under
23 608C14 of the Act that by becoming a handler you become
24 liable for criminal penalties of up to \$5,000 each day
25 for any violation of the marketing order, including

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1 paperwork and record keeping violations?

2 A. Am I aware of that?

3 Q. Yes, sir.

4 A. Yes, I am.

5 Q. And did you advise growers in your
6 discussions leading up to the order that that was
7 something they'd be facing?

8 A. I don't specifically recall that in that
9 context, but there has been discussion about -- that you
10 would have to be accountable as a handler for the record
11 keeping, and there were penalties if you didn't adhere
12 to the rules.

13 Q. Okay. And in addition to the criminal
14 fines and penalties for each day, are you also aware
15 yourself and did you advise growers that they'd be
16 subject under 608C14B of the Act to civil penalties of
17 up to \$1,000 for a day during each day that there's a
18 violation of any provision of the marketing order,
19 including the record keeping and report provisions?

20 A. Well, I'm not going to venture to say
21 that I've quoted every one of those statutes to the
22 growers. I guess my comment would be that it's worked
23 before. The committee has the, I think, the flexibility
24 to address compliance or non-compliance, and if a grower
25 who was acting as a handler did not comply, he should be

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1 subject to the same penalties that a handler, so-called
2 strictly handler would have. It's the same scenario.
3 So I guess that I would say that they have to be subject
4 to make sure that the reporting and the -- and
5 everything is taken care of.

6 ***

7 MR. MOODY: Thank you, Mr. Gasseling.

8 ADMINISTRATIVE LAW JUDGE: All right. Let's
9 change the tape. It's now 11:58.

10 ***

11 ADMINISTRATIVE LAW JUDGE: All right. We're
12 back on record at 12:10. We took care of some other
13 matters besides changing the tape. Are there any other
14 questions for Mr. Gasseling?

15 ***

16 BY ADMINISTRATIVE LAW JUDGE:

17 Q. Mr. Gasseling, I have a question with
18 regard to the production area, Section 991.05. If
19 District 3 were eliminated and only Washington and
20 Oregon growers were subject to the proposed marketing
21 order, would you still be in favor of it being
22 promulgated?

23 A. Let's say I would be less in favor of it,
24 because I think it still comes down to the basic
25 scenario that these are viable areas that hops can be

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1 grown in. There is infrastructure there, and history of
2 the Mint Order showed that a person was able to go to
3 another state and in this case I don't even know if mint
4 was grown but grow a substantial amount of product and
5 cause a problem for the production areas. So I would
6 feel that given the history of hop production in the
7 northwest, that these four states need to be included.
8 And I've heard the comment that, well, why not New York?
9 They used to grow them, too, and my answer is that
10 there's no infrastructure there to do that. It would
11 take a tremendous amount of investment to do that, and
12 they haven't been growing a long time. There's no
13 history of those varieties being able to be grown,
14 today's varieties, but we do have a history in these
15 states. And so I think it's necessary for the operation
16 that they all be included.

17 Q. Of the states that are mentioned;
18 Washington, Oregon, Idaho, and California, which state
19 is -- are -- which -- the California growers are closest
20 to which of the other states?

21 A. I'm trying to figure out. If you go
22 north, that's into Idaho, isn't it? I don't know. You
23 know, I mean, it's -- they're grown around the
24 Sacramento Valley.

25 Q. Oh, my goodness.

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1 A. Of California.

2 Q. They're distant from every single one of
3 the other marketing areas...

4 A. Yes.

5 Q. ...aren't they?

6 A. Yes.

7 Q. Now, the Washington and the Oregon
8 marketing areas, who distant are they from each other?

9 A. Washington is in the Yakima Valley, and Oregon is
10 in the Willamette Valley.

11 Q. So a three-hour drive, four-hour drive
12 perhaps?

13 A. Yes.

14 Q. Now, do you have any idea how distant the
15 northern Idaho grower is from the other growers who are
16 apparently all in southern Idaho?

17 A. I think it's a couple, three hours from
18 the Treasure Valley to the Canadian border. Five -- I'm
19 getting some signals out there.

20 Q. At what speed?

21 A. At some speed it's probably that, but it
22 may be more than that. I used to drive it when I lived
23 in Idaho, but I can't really remember. It's probably
24 more than three hours. It could be four or five hours,
25 because it's in the very northern tip of Idaho and the

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1 Treasure Valley is in the southern part.

2 Q. So those -- that Idaho grower, I guess
3 there's only one, is really quite distant from the
4 growers in Washington, the growers in Oregon, the other
5 growers in southern Idaho I believe.

6 A. Yeah. They're pretty distant.

7 Q. Okay.

8 A. In more ways than one.

9 Q. All right. From your personal contact
10 with the growers in Oregon, what is the majority of
11 attitude there toward this proposal?

12 A. Well, my opinion is that there is a
13 majority who favor some kind of control on this market
14 in Oregon.

15 Q. And do you think a marketing order is the
16 kind of control that they envision?

17 A. Well, again, it goes back to the fact
18 that when this first -- process first started it was
19 consensus of the whole industry with possibly the
20 exception of Idaho that a mandatory program had to be
21 put into effect. And at the convention the consensus
22 was to start the process for a Federal marketing order.
23 So I think everybody was well aware that that's what was
24 going to be pursued, and that's the way the industry
25 wanted to go.

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1 Now, we, you know, we can discuss at length whether it's
2 a big majority, small majority, majority or not. The
3 Proponent's Committee has put together a program, and
4 our real goal in this whole thing is to put together a
5 program we felt was fair and allow the growers to make
6 that final determination. If they determine it's not
7 what they want, then so be it. If they do, then we go
8 forward.

9 But our goal was to get this process to this point and
10 then to the next point of a referendum, because we are
11 the growers, and we are the people that are going to
12 either benefit or suffer or a combination with whatever
13 comes out of this. So I think we just wanted to get
14 this thing to a vote and let the growers determine it.

15 ***

16 ADMINISTRATIVE LAW JUDGE: Thank you very
17 much, Mr. Gasseling. Anything else you'd like to add
18 about any topic?

19 MR. GASSELING: I think I've done about all I
20 can.

21 ADMINISTRATIVE LAW JUDGE: All right. Thank
22 you. You've been an excellent witness. I appreciate
23 it.

24 MR. GASSELING: Thank you.

25 ADMINISTRATIVE LAW JUDGE: Now, would you give

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1 back to the court reporter that which Mr. Monahan
2 borrowed from him.

3 MR. MONAHAN: Exhibit 10.

4 MR. GASSELING: Yeah. I'm trying -- there it
5 is.

6 ADMINISTRATIVE LAW JUDGE: Thank you. All
7 right. Mr. Carswell, you may call your witness now.

8 MR. CARSWELL: Thank you, Your Honor. I'd
9 like to call Mr. Don Kloth, K-l-o-t-h, and what I'd like
10 to do, Your Honor, is ask him a few questions to set
11 forth his background, and then he has some comments that
12 he would like to make, and then I would like to ask him
13 a few questions on direct examination.

14 As I mentioned yesterday, his comments really
15 are notes that he drafted that have been typed up, but
16 since everybody else has pretty much shared their
17 statement, I'm going to go ahead, and I've got copies
18 for the folks that have been getting copies of his
19 comments, and I'll pass those out now.

20 ADMINISTRATIVE LAW JUDGE: Yes, please. We'll
21 go off record while you do that.

22 ***

23 [Off the record]

24 [On the record]

25 ***

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1 ADMINISTRATIVE LAW JUDGE: We're on record now
2 at 12:20. Mr. Kloth, would you state and spell your
3 full name for the record?

4 DR. KLOTH: My name is Donald W. Kloth. First
5 name, D-o-n-a-l-d, middle initial W, last name
6 K-l-o-t-h.

7 ADMINISTRATIVE LAW JUDGE: Thank you. And
8 I've handed the court reporter what's been marked as
9 Exhibit 22. Is that a copy of your prepared statement?

10 DR. KLOTH: Yes, it is.

11 ADMINISTRATIVE LAW JUDGE: All right. Mr.
12 Carswell, you may examine -- oh, Mr. Kloth, would you
13 raise your right hand? I'll put you under oath.

14 ***

15 [Witness sworn]

16 ***

17 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.
18 Carswell.

19 MR. CARSWELL: Thank you, Your Honor.

20 ***

21 DONALD W. KLOTH,
22 having first been duly sworn, according to the law,
23 testified as follows:

24 BY MR. CARSWELL:

25 Q. Mr. Kloth, if you wouldn't mind, if you
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1 could state your title at Anheuser-Busch Companies, Inc.

2 A. Vice-president and group executive.

3 Q. Could you describe your responsibilities
4 at Anheuser-Busch Companies, Inc.?

5 A. I am chairman and CEO of Busch
6 Agricultural Resources, which is an agricultural
7 subsidiary of Anheuser-Busch. The raw materials
8 procurement organization reports into my office. The
9 corporate purchasing organization reports into my
10 office. Some of our transportation functions report
11 into my office, as well as a few other miscellaneous
12 responsibilities.

13 Q. So as part of your area of responsibility
14 you're ultimately responsible for the hop purchasing
15 decisions made by the company. Is that correct?

16 A. Correct.

17 Q. How long have you been at Anheuser-Busch?

18 A. Thirty-three years.

19 Q. If you wouldn't mind, if you could also
20 give us a little background on your educational history,
21 beginning with your undergraduate degree.

22 A. I have a BS and MS degree from Southern
23 Illinois in agricultural industries. I have a Ph.D.
24 from Oklahoma State in agricultural economics.

25 Q. Are you also a farmer?

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1 A. I was a farmer at one point in time. I
2 am now just a land owner, which is a productive farm by
3 the way.

4 Q. Mr. Kloth, I believe you have some
5 comments and then if you don't mind, I'm going to ask
6 you a few questions after you've completed. Thank you.

7 A. Okay. Judge Clifton, Ms. Deskins, and
8 other representatives of the USDA, growers, other
9 participants, thank you for the opportunity to testify
10 at this hearing where we're considering whether to issue
11 a Hop Marketing Order.

12 And Your Honor, I'd like to refer to the Hop Marketing
13 Order as HMO in my -- the rest of my comments.

14 The proposed HMO would primarily consist of volume
15 control measures in the form of grower allotments of
16 saleable hop alpha. As you have seen in the comments
17 submitted prior to these hearings and as I believe you
18 will see during the course of these proceedings, many
19 other growers, as well as other interested parties such
20 as brewers and handlers, are opposed to the proposed
21 order.

22 Anheuser-Busch is the world's largest brewer. We
23 operate 14 breweries, 12 of which are located in the US.
24 We are also the largest purchaser of hops in the US. We
25 purchase approximately 16 percent of the total US hop

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1 production, and for these reasons we have a vital
2 interest in a thriving, vibrant US hop industry, an
3 industry that encourages private farmers to respond
4 freely to market signals and rewards them economically
5 for doing so.

6 Moreover, as a significant grower of hops at our farm in
7 Bonners Ferry, Idaho, we have an understanding of the
8 economics of hop growing, as well as the issues facing
9 hop producers today, a perspective that many of the
10 other brewers probably would not have.

11 We have studied the proposed HMO and present hop
12 marketing conditions long and hard, and our examination
13 lead us to tell you that we truly believe that the
14 proposed HMO under current economic conditions will only
15 damage most US hop growers. And it will likely benefit
16 foreign producers such as the Germans, the East
17 Europeans, and the Chinese.

18 I'd like to make my comments regarding five basic
19 points. The first point is the Hop Marketing Order is
20 designed to increase price by affecting US supply by
21 farming a cartel. Anheuser-Busch, however, has
22 historically offered multi-year aroma hop contracts.
23 These contracts were good and profitable for the
24 growers. They offered fair returns, and they also
25 offered a planning horizon so that you could plan your

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1 operations.

2 These contracts were also good for Anheuser-Busch. They
3 gave us supply assurance, gave us our varietal
4 preference, met our quality standards at a cost that we
5 felt that we could live with.

6 Our contract program formed a supply, demand equilibrium
7 that benefited both the grower as well as the customer.

8 The problem with the US hop industry is not alpha hops.

9 Let me rephrase that. I misspoke.

10 The problem with the US hop industry is not aroma hops.

11 It's the high-alpha hop that's the problem, and you will
12 not solve the high-alpha hop problem with a marketing

13 order. Keep in mind that hops move in a global market.

14 The rest of the world produces 70 plus percent of the
15 hops produced and will not be in a Hop Marketing Order,
16 nor will they have any type of supply controls. Foreign
17 producers will view a US Hop Marketing Order as a signal
18 to increase production. I think this will limit US hop
19 producers with respect to their goals in terms of their
20 pricing goals on high-alpha hops.

21 As I would like to make a concluding comment about this
22 point one, as it relates to high-alpha hops, under a
23 marketing order foreign competition will force a
24 downward spiral of eroding US market share and vanishing
25 profitability for US producers. On the aroma side,

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1 since it is our understanding that 95 percent of aroma
2 hops are contracted, this acreage will be forced to
3 absorb higher costs. Those costs being the additional
4 costs to purchase additional saleable allotment, plus
5 fixed cost spread over fewer pounds of production.
6 This will be -- lead to forcing a higher price or
7 driving your customers to foreign sources.
8 My second point revolves around the previous marketing
9 orders which have failed. They have failed when markets
10 have changed, when supply controls misjudged demand, and
11 they created additional costs of production for the
12 grower when the producers were forced to buy allotments
13 to increase production.
14 As a concluding comment on this point, producers and
15 consumers responding to prices set by market supply and
16 demand in a free enterprise environment have succeeded.
17 Government control of any business is not the way
18 America was built, and past Hop Marketing Orders have
19 categorically failed. Instead of constraints the
20 industry needs to work on technology, cost
21 effectiveness, improved market outlook, and long-term
22 contracts.
23 My third point. Under normal circumstances Anheuser-
24 Busch could self-protect its supply needs by growing
25 more hops ourselves, but under the order we could be

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1 forced to cut back production of our own hops. And
2 given our view of the drastic cut needed and saleable
3 allotment under the proposed HMO, we think that it's
4 going to take a significant cutback to meet the supply,
5 demand conditions that are reflected in the world
6 situation.

7 My concluding comment on point three is in the late
8 1980s Anheuser-Busch invested significant capital to
9 grow a portion of our hop requirements. To be
10 potentially forced to cut back production of our
11 existing operation for our own brewing use is grossly
12 unfair.

13 In addition, the 1 percent annual saleable allotment
14 increase allowed in the proposed HMO for new entrants
15 and expansion of existing operations is totally
16 insufficient.

17 Point number four. Central committee management will
18 consist of eight growers. What happens if this
19 committee, because of inaccurate forecasting or
20 over-optimism, misjudges the marketplace?

21 My concluding comment on this point, central committee
22 management simply does not work. Growers are individual
23 businessmen and women who are best equipped to make
24 production decisions and should be free to make their
25 own decisions on what to grow and how much to grow.

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1 My fifth point. Value creation of saleable allotments.
2 We believe that many of the proponents of this HMO
3 simply view the HMO as a way to exit the industry and
4 receive artificially-created value while doing so. We
5 believe that this will place intolerable burden on the
6 remaining growers who presently grow all of the majority
7 of their hops on contracts.

8 My concluding comment on this point. No
9 Government-sponsored program should be created that
10 leads to the artificial creation of value.

11 I would now like to respond to some additional points,
12 four of them, that the Proponents initially set forth as
13 the basis for implementing the HMO.

14 Point one. The Proponents have argued that an HMO would
15 increase long-term contracting. In fact, we believe
16 based on our own experience that an HMO would have the
17 opposite effect. In the 1980s Anheuser-Busch began a
18 direct-to-grower program, under which we began to make
19 substantial purchases directly from growers. During the
20 past decade direct purchases in the farm, multi-year,
21 and forward contracts have come to fulfill a substantial
22 majority of our US hop requirements.

23 Our reasons for initiating the direct-to-grower program
24 included our desire to establish long-term relationship
25 with growers that have efficient operations and that are

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1 prepared to make investments in growing the varieties we
2 require subject to our quality control standards.

3 The proposed HMO would create an environment that would
4 challenge our ability to continue to achieve the
5 objective of long-term relationships with efficient US
6 growers. Under an HMO Anheuser-Busch has no incentive
7 to offer multi-year contracts. We have no assurances
8 that US hop sources will be competitive with alternative
9 sources.

10 Since our current long-term contracts expire with the
11 2003, crop, we are prepared to maintain our aroma hop
12 contract volume by offering new, three-year contracts.
13 However, we will wait to see the final outcome of the
14 proposed HMO before we move forward. There are just too
15 many variables and factors to take into consideration to
16 move forward at this time.

17 Point two. US growers have acted independently, are
18 acting independently, failed to limit production which
19 justifies a central planning mechanism. That has been
20 one of their statements.

21 Again, central planning committees don't work. Many
22 growers read the market signals correctly. They entered
23 long-term contracts, and they gained a fair return.

24 Point three. The Proponents have said that the
25 availability of more accurate information will aid the

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1 central committee to wisely monitor the supply of hops.
2 Free market forces aided by the every-increasing
3 accurate information available to growers that
4 Proponents have identified will always result in better
5 decision making than any centralized planning committee.
6 In this case the central committee would be made up of
7 eight growers who would be very unlikely to have enough
8 market information or vision to make any better
9 decisions than the marketplace.

10 Point four. I have stated that the lack of previously
11 common German crop failures have not materialized to fix
12 the problem of oversupply. Production plans based on
13 the potential demise of a competitor's ability to supply
14 is risky.

15 However, we currently have a German hop crop which is
16 reportedly to be down about 40 percent. The point being
17 that crop shortages still occur, and prices will adjust
18 accordingly.

19 From a policy perspective it is undisputed that the
20 proposed order would once again establish a
21 Government-mandated hop cartel, albeit we feel an
22 unsuccessful one, which could run counter to the Bush
23 administration's recently-stated agricultural policy
24 that recognizes that, and I quote, "The marketplace is
25 the best guide for allocating resources and provides the

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1 most effective reward for efficiency and good
2 management."

3 The proposed order would also contravene America's
4 international trade policy agenda. The US has long
5 advocated that its trade partners such as the European
6 Union move away from the Government subsidy and quota
7 programs of the past and allow the free market system to
8 ensure that supplies meets demand. For the US to adopt
9 domestically the same policies that it is condemning
10 internationally would significantly undermine both our
11 credibility as well our international negotiating
12 position.

13 It would be particularly ironic to give the EU an
14 example of American Government intervention to use
15 against the US while the US hop production moves to EU
16 growers.

17 In conclusion, Anheuser-Busch believes that free
18 enterprise and free trade are the only ways to allocate
19 resources efficiently. They are the cornerstones of our
20 way of life, and they are the prevailing policies of the
21 present administration. They are also the best remedy
22 for the US hop industry.

23 Past hop marketing orders have categorically failed, and
24 there is no reason to believe that a new order would
25 work any better. In fact, there is every reason to

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1 anticipate that the proposed HMO would fare far worse
2 than the old ones.

3 Again, Judge Clifton, Ms. Deskins, all other USDA
4 representatives, participants, I appreciate you for
5 allowing me to make these comments. Thank you.

6 ***

7 ADMINISTRATIVE LAW JUDGE: Dr. Kloth, thank
8 you. I would like now to open the floor for questions,
9 and I'd like to begin with any questions that people
10 oppose to the marketing order proposal might have.

11 MR. CARSWELL: I have a few questions, Your
12 Honor.

13 ADMINISTRATIVE LAW JUDGE: Mr. Carswell.

14 MR. CARSWELL: Thank you.

15 ***

16 BY MR. CARSWELL:

17 Q. Mr. Kloth, can you describe how you
18 understand how the initial base allotments would be
19 established under the proposed HMO?

20 A. Well, I thought I kind of understood it,
21 but after listening to some of the other comments, I'm
22 going to have to reevaluate. So let me give you my
23 impression of how I think it would work.
24 It's my understanding that you would go back over a
25 six-year period, determine the -- a year that you would

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1 probably have maximized your production, and that would
2 be the year that you would submit as far as establishing
3 year base. Then this would go into the committee for
4 determination, and I think the end result of that based
5 on what I know is you're going to have a
6 significantly-elevated saleable base versus actual
7 production.

8 Q. By the way, forgive me, sir. I'm not
9 used to calling you anything other than Don, but it's
10 Dr. Kloth, and I apologize for that.

11 A. Well, why don't we just make it Don?

12 Q. Okay.

13 A. Okay.

14 Q. Sounds good to me.

15 ***

16 ADMINISTRATIVE LAW JUDGE: You'll still be Dr.
17 Kloth to me.

18 DR. KLOTH: The Judge speaks.

19 ***

20 BY MR. CARSWELL:

21 Q. Dr. Kloth, I believe you alluded earlier
22 to the fact that, in your comments, that you believe
23 that the -- there would be a drastic cut in the saleable
24 quantity to reduce the level of hop production. Could
25 you explain why you think that there'll be a drastic cut

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1 needed?

2 A. Well, I have done some preliminary
3 calculations on the back of an envelope, and it would
4 appear to me that when you take the best production year
5 by each grower and anyone can make their own
6 calculations, but I think it could be upward of 40
7 percent above the existing production level. So, first
8 of all, you're going to have to cut 40 percent. Our
9 concern is just to get it back to where the production
10 level is today.

11 Now, any grower who has had steady production or
12 increasing production is going to have to take a
13 disproportionate hit to his actual operation versus
14 anyone who might have had a declining production plan.
15 So the net result of that is you're going to have excess
16 saleable allotment with those who have had declining
17 production, and they will make those then available to
18 folks that have had increasing production or need
19 increased allotment in order to expand their operations.

20 Q. So you believe that in the event of a
21 drastic cut that those growers who have been steady or
22 expanding will have to acquire base to keep the product
23 at an existing -- to keep their production at existing
24 or expanding levels?

25 A. That would be my belief.

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1 Q. Do you believe that this need for base,
2 this need to acquire base will create an artificial or
3 -- and by artificial I mean man-made as compared to
4 market-forced-created value for the base?

5 A. I believe it will. I've been involved in
6 a limited number of other types of allotment programs.
7 I think the previous allotment or Hop Marketing Order
8 created a value on this concept. Many years ago I
9 remember in rice there was a land value that was
10 capitalized into having ownership of rice allotments. I
11 think that's correct.

12 Q. Don, would you characterize the expense
13 of acquiring base as an additional cost for those
14 growers who would need to acquire base?

15 A. Well, I think there would be an
16 additional cost, and I think that the customers would
17 eventually be asked to cover a portion of that cost, if
18 not all of it.

19 Q. Would you believe that the need to
20 acquire base for those growers who would need to acquire
21 it would compete with other costs that they might
22 otherwise choose to spend their money on, such as
23 capital investments to improve their operations?

24 A. I think that's a safe assumption.

25 Q. Do you believe that this additional cost

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1 will disadvantage US hop growers who have to acquire
2 base in their competition with foreign hop growers?

3 A. Anytime you increase your cost base
4 structure you're going to put yourself somewhat at a
5 disadvantage to your competition.

6 Q. Do you also think that this additional
7 cost will disadvantage US hops growers who have to
8 acquire base in their competition with other US hop
9 growers who do not have to acquire base?

10 A. I think it will.

11 Q. Do you believe that this competitive
12 disadvantage vis-à-vis US hop growers who need base and
13 those who don't would be exacerbated in those situations
14 where the US hop growers who don't need base are also
15 being paid money for their base?

16 A. I think the logic is there that it would.

17 Q. These would be hop growers who are
18 selling base but are obviously remaining in the market
19 as well.

20 A. Right.

21 Q. Do you believe that this additional cost
22 borne by net acquirers of base and value obtained by net
23 sellers of base constitutes an artificial transfer of
24 wealth from net acquirers to net sellers?

25 A. Yes, I think that would be the case.

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1 Q. Finally, Don, considering the presence of
2 foreign competition, do you believe that any output
3 restrictions under the HMO would result in any
4 sustainable price increases by US hop growers?

5 A. Well, my view of that is that you have
6 two markets. You have the high-alpha market, and I
7 think that it will be interesting to see how you're
8 going to get price increases in a global market where
9 competition is pretty intense. On the alpha side I
10 think as you bring forth the cost of people who are
11 wanting to expand their acreage and you load up their
12 cost structure, then the domestic or the long-term
13 contract players, you know, I think there you might see
14 some price escalation. Or at least that will be the
15 attempt.
16 I think that what will then become telling on that is
17 whether or not there is substitutability in foreign
18 sources or whether you stay with the domestic producers.

19 ***

20 MR. CARSWELL: That's all I had, Don. Thank
21 you very much.

22 DR. KLOTH: Okay.

23 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
24 Carswell. Additional questions from those who are here
25 to present a position against the proposals? Mr. Moody.

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BY MR. MOODY:

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Q. Yes, Dr. Kloth, thank you. You mentioned four or five examples of the benefits of foreign contracting. That would supply assurance, price assurance for the growers, quality assurance for you as a purchaser, planning purposes, balancing supply and demand, et cetera. And then you went on to testify that HMO, if implemented, would jeopardize your plans for continuing those foreign contracts or put them at risk. I just want to explore that just a little bit. Do the benefits of foreign contracting that you testified to help provide stability in the context of an underlying free market operation?

A. If I understand the question, I think that our forward contracts really do bring stability in a free-market environment. And I say that because that is an interchange between customer and supplier, and that to me is a great -- it's been a great tool for the producers as well as our company, and I think that it does fall within the free-market system. I don't know -- does that answer your question?

Q. Yes, it does, and does the fact that -- so it would be -- would it be correct to say that implementing an HMO would actually threaten or put at

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1 risk or end those benefits that are presently available
2 in the free market?

3 A. Well, there are a lot of factors to
4 consider, you know, as it relates to that. Right now it
5 is very difficult to determine what the saleable
6 allotments might be for any of our supplier base, and
7 that is a real problem. We haven't gone in and
8 evaluated each of our suppliers, but it certainly, I
9 think, throws a curve ball at good planning and analysis
10 as to how you move forward as a team. I think that over
11 the last 15 years Anheuser-Busch and the growing
12 community where we have hop contracts, it's been a team
13 effort, and I think that this is raising some issues
14 around how you keep that going, given the uncertainties
15 and the factors that come into play when you boil all
16 this -- these different issues down.

17 Q. All right. Were you involved in the
18 -- on the purchasing side while the old marketing order
19 was in effect?

20 A. Let's see. Yes, I was.

21 Q. Okay. If you have -- if you can just
22 briefly say what -- if you were involved, if you have
23 knowledge about that, about what some of the problems of
24 the old order were and whether the Proponent's proposal
25 in any way addresses those problems.

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1 A. I had just gotten into my current
2 position maybe one or two years prior to that. All I
3 will tell you is at that point in time we purchased our
4 hops primarily through other handlers. We did not have
5 the direct grower contract program at that point in
6 time, so I think there was an altogether different set
7 of dynamics, you know, that were at play there versus
8 what is here today.

9 Q. All right. Okay. And so then since the
10 termination of the old order, all those benefits you
11 testified to of forward contracting really came into
12 play, were really developed under the free-market system
13 that's been in place since the termination of the old
14 order.

15 A. Correct.

16 Q. Okay.

17 ***

18 MR. MOODY: Thanks very much, Dr. Kloth.

19 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
20 Moody. Are there additional questions from those who
21 are here against the proposal? Dr. Jekanowski. Would
22 you introduce yourselves to Dr. Kloth so he knows your
23 background?

24 DR. JEKANOWSKI: Yeah. My name is Mark
25 Jekanowski. I'm an agriculture economist with Sparks
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1 Companies. Just a real quick question, a couple of
2 short questions.

3 ***

4 BY DR. JEKANOWSKI:

5 Q. Based on your knowledge of the hop
6 industry and the hop market, to your knowledge are there
7 any strict border controls regarding importing foreign
8 hops? Are there any barriers to firms bringing hops in
9 from overseas if they can't get them domestically?

10 A. I think there is a small duty that is
11 paid on most imported hops, and other than that I see
12 really no barriers. There are no USDA quarantines or
13 anything of that nature.

14 Q. So basically -- that basically answers my
15 question. So basically there's not anything that will
16 fundamentally restrict a US purchaser or brewer from
17 sourcing hops overseas.

18 A. Not to my knowledge anyway.

19 ***

20 DR. JEKANOWSKI: Thank you.

21 ADMINISTRATIVE LAW JUDGE: All right. We'll
22 change the tape now at 12:54.

23 ***

24 [Tape 3 Side 2]

25 ***

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1 ADMINISTRATIVE LAW JUDGE: We're back on
2 record at 12:55. Any other questions from those who are
3 here in a position against the proposal?

4 There appear to be none. There is? No. All
5 right. Any questions from those who are here supporting
6 the proposal? Mr. Monahan.

7 MR. MONAHAN: Thank you, Your Honor.

8 ***

9 BY MR. MONAHAN:

10 Q. Dr. Kloth, my name is Brendan Monahan. I
11 represent the Proponent's Committee. I've been assured
12 by members of the committee that Anheuser-Busch has been
13 a tremendous friend and ally of the American hop grower,
14 and I have some -- I do have some questions, however,
15 about the historical practices of Anheuser-Busch under
16 the old marketing order. I understand if you don't have
17 any personal knowledge. You can let me know.

18 A. Well, plus, if you'll remember, I'm over
19 60 so maybe I don't remember quite as well.

20 Q. I understand. I understand. My
21 understanding, sir, is that Anheuser-Busch began its
22 program of direct purchasing with American hop growers
23 in the mid '80s.

24 A. I would say the late.

25 Q. Okay.

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1 A. I'd say '86, '86, '88, in that range.

2 Q. Okay. So it's fair to say that at the
3 conclusion or rather subsequent to the expiration of the
4 old Hop Marketing Order.

5 A. Correct.

6 Q. And at least as I understand it
7 Anheuser-Busch has recognized the tremendous superior
8 quality of the hops grown by American hop growers and
9 has rewarded them for that in this timeframe.

10 A. I think that's been a joint effort.

11 Q. Right. Under the previous Hop Marketing
12 Order my understanding is that Anheuser-Busch actually
13 acquired American hops through dealers. Is that right?

14 A. Right.

15 Q. Do you know if they utilized ford
16 contracts with the dealers, or did they buy on the spot
17 market every year?

18 A. I can't answer that definitively.

19 Q. Okay.

20 A. I just don't know.

21 Q. Thank you, sir. Did -- to the best of
22 your knowledge from 1966, through 1985, and I know I'm
23 going to have to rely on your historical archived
24 knowledge, institutional knowledge, are you aware of any
25 time that the Anheuser-Busch Company received less

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1 quantity of American hops than it desired?

2 A. I can give you my suspicion.

3 Q. Let me...

4 A. I'm sorry.

5 Q. ...I would first like to exhaust your
6 knowledge, if you actually know.

7 A. I don't actually know.

8 Q. What do you suspect, sir?

9 A. I think that there were probably times
10 when we did have shortfalls, but that it may have been
11 because of crop growing conditions as much as anything
12 else. And it's because of this that we do even today
13 carry significant inventories.

14 Q. I see. So any shortages that you would
15 suspect would be related to Mother Nature and not volume
16 restrictions.

17 A. Correct.

18 Q. All right.

19 ***

20 MR. MONAHAN: That's all I have. Thank you
21 very much.

22 DR. KLOTH: Okay.

23 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
24 Monahan. Other questions by those who are here in favor
25 of the proposal? There appear to be none. I'd invite

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1 questions now from the USDA representatives who are
2 here.

3 MS. DESKINS: We have no questions.

4 ADMINISTRATIVE LAW JUDGE: All right. Thank
5 you, Ms. Deskins.

6 ***

7 BY ADMINISTRATIVE LAW JUDGE:

8 Q. I wanted to make sure I understood your
9 use of the term, 70 percent, when you were talking about
10 the source of hops worldwide. Would you tell me again
11 what that figure was?

12 A. Well, it's my understanding that the US
13 production represents about 70 to 75 percent of world
14 production.

15 ***

16 MR. CARSWELL: Don, I think you misstated
17 that.

18 DR. KLOTH: Did I? Correct me then.

19 MR. CARSWELL: Well, I don't want to put words
20 in your mouth, but I believe you did it -- you stated it
21 backwards. If you'd just look at the -- look at your
22 statement or your comments and state it again. I think
23 you'll get it right.

24 DR. KLOTH: Well, let me state it without
25 finding it. I think that the US production represents

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1 25 percent of world production.

2 MR. CARSWELL: Right.

3 DR. KLOTH: Is that -- that's what I thought I
4 said. Maybe being over 60 is even a shorter frame than
5 I...

6 ADMINISTRATIVE LAW JUDGE: That is what you
7 had indicated when you first read your statement, that
8 70 percent of the worldwide production is foreign, and I
9 was surprised that it's that great.

10 ***

11 BY ADMINISTRATIVE LAW JUDGE:

12 Q. But that's -- what do you base that on?

13 A. Well, I think that, you know, there is
14 production data that reflects that kind of production
15 history, and you have to keep in mind that the east
16 European countries have increased production rather
17 dramatically in recent years.

18 Q. Which countries would those be?

19 A. I think the Chinese are really starting
20 to produce significantly.

21 Q. Now, I was aware of references to
22 Germany, the United Kingdom, New Zealand, Australia, and
23 then China.

24 A. Uh-huh.

25 Q. Are you aware of any other major hop

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1 producing nations?

2 A. Well, you have France, you have
3 Czechoslovakia, you have Poland. That's all that comes
4 to my mind right now, although, you know, hops can grow
5 anywhere. But I think those would be the predominant
6 ones. A little bit in Chili, a very small quantity.
7 Chili or Argentina. A very small quantity.

8 ***

9 ADMINISTRATIVE LAW JUDGE: All right. Thank
10 you. Follow-up questions. Mr. Carswell.

11 MR. CARSWELL: Yes, Your Honor. Thank you.

12 ***

13 BY MR. CARSWELL:

14 Q. Don, I just wanted to ask you, it's kind
15 of a redirect from something that Brendan asked you
16 about buying from American hop growers, has
17 Anheuser-Busch bought significant quantities of hops
18 from foreign producers?

19 A. Yes, we have.

20 ***

21 MR. CARSWELL: That's all I had. Thank you.

22 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
23 Carswell. Mr. Monahan.

24 ***

25 BY MR. MONAHAN:

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1 Q. My question, sir, Dr. Kloth, relates to
2 the 70 percent figure you used. As I understand it the
3 American hop grower produces about 30 percent of the
4 world market when we're talking about pounds of raw
5 hops. Isn't that right?

6 A. I -- it's in the ballpark. It's plus or
7 minus by 70 percent by a few percentage points.

8 Q. My point being that we are talking about
9 raw pounds. Correct?

10 A. Yes.

11 Q. When we actually do the analysis on alpha
12 production, pounds and kilograms of alpha, it's actually
13 right around 50/50, wouldn't you agree?

14 A. To tell you the truth I don't look at
15 alpha. Our company uses very little high-alpha hops, so
16 we just don't concentrate on it unless it gets involved
17 in these kinds of issues.

18 Q. So you wouldn't know the breakdown
19 between...

20 A. No.

21 Q. ...US and foreign production of alpha
22 acids?

23 A. No.

24 ***

25 MR. MONAHAN: Thank you, sir.

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1 ADMINISTRATIVE LAW JUDGE: Any additional
2 questions for Dr. Kloth? There are none. You may step
3 down. Thank you, Dr. Kloth.

4 DR. KLOTH: Thank you.

5 ADMINISTRATIVE LAW JUDGE: Mr. Carswell, did
6 -- does either you or Mr. Moody intend to call any other
7 witnesses today?

8 MR. CARSWELL: Actually, yes, Your Honor, I
9 believe some, well, I won't speak for Mr. Moody. I'm
10 aware of some other growers who have come, and by the
11 way, Your Honor, I've given up on trying to personally
12 leave early today if, because of these other people
13 showing up and wanting to testify and this being their
14 last chance to do it.

15 ADMINISTRATIVE LAW JUDGE: Oh. This is
16 shifting earth here beneath my feet. How many of you
17 have made arrangements now to leave in accordance with
18 out completing at 3:00 that would difficult to change?
19 Several. Can you undo it, and we work until 5:00?
20 Okay. I think we'd better work until 5:00. I certainly
21 don't want to miss a witness who is available to us
22 today who will not be available next week in Yakima.

23 All right. Would it be a good time to break
24 for lunch? It's 1:05. And can everyone make due with
25 an hour? All right. Please be back and ready to go at

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1 2:05.

2 ***

3 [Off the record]

4 [On the record]

5 ***

6 ADMINISTRATIVE LAW JUDGE: All right. We're
7 back on record. Before we begin with the next witness I
8 did want to give you an idea as to the amount of time
9 consumed so far, because I was asked about that. I want
10 you to bear in mind that the breaks that I take for
11 comfort breaks, the questions I ask, the questions that
12 the representatives from USDA ask are not counted.
13 Nevertheless, it appears we haven't put in much time
14 here. I'm going to work backwards. So far today those
15 in favor of the proposals have consumed three-quarters
16 of an hour. And those against have consumed two hours.
17 I round to the nearest five minutes.

18 Yesterday those using time who are against the
19 proposals consumed four and a half hours. Those in
20 favor consumed a half an hour. Our first day those in
21 favor of the proposals consumed two hours, and those
22 against consumed two and a half hours.

23 So I didn't add up all those totals, if
24 somebody wants to do that for me and tell me, then I'll
25 be able to keep track. Did you do it, Mr. Monahan?

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1 MR. MONAHAN: I'll invite anyone to check my
2 math, but I have three hours, no, excuse me. Three .25
3 hours for the Proponents and nine hours even for the
4 opposition.

5 ADMINISTRATIVE LAW JUDGE: Okay. So, Mr.
6 Moody, you're doing fine. I know you were concerned
7 that you have equal opportunity to present your point of
8 view.

9 MR. MOODY: Right, and I was actually kind of
10 -- when we brought that up on the conference call, I was
11 sort of thinking about the merits rather than sort of
12 focusing on all the cross, and I know that sometimes
13 it's hard to anticipate how much time cross is going to
14 take in advance. But we're certainly -- and I speak for
15 myself, and I'm sure I speak for everybody in the room,
16 including Brendan and his team, that we're all trying to
17 keep our focus on moving this along and not trying to do
18 anything on either side that constitutes a delay of
19 game.

20 ADMINISTRATIVE LAW JUDGE: Absolutely. I've
21 been very impressed with the way you've proceeded, and I
22 appreciate that very much. However, and I didn't say
23 this in the phone call when we were talking about equal
24 time, but I always count cross the same as direct exam.
25 And I have run trials this way. I have taken into

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1 account how many hours we had allotted for a trial, and
2 I had given each side half the time, and it's very
3 nerve-wracking, but it does get the hearing done.

4 Okay. Good. Now, who will be next to call a
5 witness?

6 MR. MONAHAN: Your Honor, the Proponents would
7 like to call Mr. Rod Christensen to the stand.

8 ADMINISTRATIVE LAW JUDGE: All right.
9 Although you have introduced yourself earlier in the day
10 I'd still like you again to state your full name and
11 spell it for the record.

12 MR. CHRISTENSEN: Rod Christensen, R-o-d,
13 C-h-r-i-s-t-e-n-s-e-n.

14 ADMINISTRATIVE LAW JUDGE: Thank you. And
15 would you raise your right hand, and I'll swear you in.

16 ***

17 [Witness sworn]

18 ***

19 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.
20 Monahan, will you have the preliminary questions?

21 MR. MONAHAN: Yes, Your Honor. Thank you.

22 ADMINISTRATIVE LAW JUDGE: You may proceed.

23 ***

24 ROD CHRISTENSEN,
25 having first been duly sworn, according to the law,

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1 testified as follows:

2 BY MR. MONAHAN:

3 Q. Thanks, Mr. Christensen, in an effort to
4 balance the proceedings I'm going to ask you to talk for
5 the next six hours straight. Is that all right?

6 A. It's okay.

7 Q. Just teasing. You've been -- can you
8 please describe the role you played in the preparation
9 of the proposed Hop Marketing Order that was included in
10 the Federal Register?

11 A. I was hired by the Proponent's Committee
12 to just advise on language and for some sections of the
13 order and help draft some of that language to present to
14 the Department and further to help in the steps leading
15 up to this hearing.

16 Q. And in all fairness to you, sir, can you
17 please inform the Judge and the USDA when I asked you to
18 take the stand and testify today?

19 A. This morning.

20 Q. Thank you very much. What I would like
21 you to do, sir, is to turn to Section 991.30 of the
22 proposed order, and just explain for us here -- I should
23 expand my question. 991.30 and 991.31 and explain for
24 us here what the expenses and assessments provisions
25 were intended to accomplish and how they are intended to

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1 work.

2 A. Okay. What I would like to do, I'd like
3 to just state that although I'm somewhat familiar with a
4 lot of the language and the intent behind it, I don't
5 present myself in any way as an expert on the hop
6 industry and the intricacies of hop marketing. But I'll
7 do my best to present these sections that I've been
8 assigned.

9 And the way I would like to do that is just simply to
10 read those sections into the record and then take
11 questions about them.

12 So beginning with Section 991.30, expenses, the
13 committee is authorized to incur such expenses as the
14 Secretary finds are reasonable and likely to be incurred
15 by it for such purposes as the Secretary may, pursuant
16 to this part, determine to be appropriate and for the
17 maintenance and functioning of the committee during each
18 marketing year.

19 The committee shall submit to the Secretary a budget for
20 each marketing year, including an explanation of the
21 items appearing therein and a recommendation as to the
22 rate of assessment for such year.

23 Section 991.31, assessments, part A, requirements for
24 payment. Each person who first handles hops shall pay
25 to the committee upon demand that handler's pro rata

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1 share of the expenses authorized by the Secretary for
2 each marketing year. Each handler's pro rata share for
3 each variety of hops sold shall be the rate of
4 assessment fixed by the Secretary times the number of
5 pounds of that variety of hops sold times the alpha acid
6 factor for that variety of hops, which the handler
7 handles as the first handler thereof.

8 The payment of assessments for the maintenance and
9 functioning of the committee and for such purposes as
10 the secretary may, pursuant to this part, determine to
11 be appropriate, may be required under this part
12 throughout the period it is in effect, irrespective of
13 whether particular provisions thereof are suspended or
14 become inoperative.

15 B, part of assessment. The Secretary shall fix the rate
16 of assessment to be paid by each handler. In order to
17 provide funds for the administration of this part before
18 sufficient operating income is available from
19 assessments, the committee may accept advanced
20 assessments and may also borrow money for such purposes.
21 Advanced assessments received from a handler shall be
22 credited toward assessments levied against the handler
23 during the marketing year.

24 C. Assessments not paid within the time prescribed by
25 the committee may be made subject to interest or late

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1 payment charges or both. The period of time, rate of
2 interest, and late payment charge will be as recommended
3 by the committee, provided that when interest or late
4 payment charges are in effect, they shall be applied to
5 all assessments not paid within the prescribed period of
6 time.

7 D, excess funds. At the end of a marketing year funds
8 in excess of the year's expenses may be placed in an
9 operating reserve not to exceed approximately one
10 marketing year's operational expenses or such lower
11 limits as the committee, with the approval of the
12 Secretary, may establish. Funds in such reserves shall
13 be available for use by the committee for expenses
14 authorized pursuant to 991.30. Funds in excess of those
15 placed in the operating reserve shall be refunded to
16 handlers, provided that any sum paid by a first handler
17 in excess of that handler's pro rata share of the
18 expenses during any marketing year may be applied by the
19 committee at the end of such marketing year to any
20 outstanding obligations due the committee from such
21 person. Each handler's share of such excess funds shall
22 be the amount of assessments paid in excess of that
23 handler's pro rata share.

24 E, disposition of funds upon termination of order. Upon
25 termination of this part any funds not required to

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1 defray the necessary expenses of liquidation shall be
2 disposed of in such manner as the Secretary may
3 determine to be appropriate, provided that to the extent
4 practicable such funds will be returned pro rata to the
5 first handler from whom such funds were collected.
6 The committee -- part F. The committee may establish
7 rules and regulations necessary and incidental to the
8 administration of this section.

9 Q. Now, sir, as a professional consultant
10 who's aided in the preparation of these provisions, is
11 it fair to say that you have some familiarity with other
12 Federal marketing orders?

13 A. Yes.

14 Q. Is there anything in the two provisions
15 that you just read that you would consider to be unique
16 or unusual or specifically tailored to the hop industry?

17 A. No.

18 Q. Okay. Do you have any other remarks or
19 observations about these two provisions?

20 A. I do not.

21 ★ ★ ★

22 MR. MONAHAN: Your Honor, Mr. Christensen is
23 going to be asked to talk about three different
24 provisions in the marketing order, and I would leave it
25 to your judgment as to whether it makes sense to invite

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1 cross examination section by section or to go all the
2 way through.

3 ADMINISTRATIVE LAW JUDGE: Section by section,
4 please.

5 MR. MONAHAN: Then I would yield the floor,
6 Your Honor.

7 ADMINISTRATIVE LAW JUDGE: All right. I would
8 invite questions about the provisions that Mr.
9 Christensen has covered so far, first of all from those
10 who are here in favor of the proposals. There are none.

11 Now from those who are here in a position
12 against the proposals. There are none.

13 Now I would invite questions from
14 representatives of the Department of Agriculture. Ms.
15 Finn.

16 MS. FINN: Thank you.

17 ***

18 BY MS. FINN:

19 Q. Since you were just helping as far as
20 with the appropriate terminology for marketing orders
21 under assessments, I mean, under expenses, you didn't
22 get into with the Proponent Committee what exactly they
23 had in mind and what type of expenses or budgetary items
24 they might have?

25 A. Not -- we didn't enumerate those things.

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1 There are provisions in the order that provide authority
2 to do various things, research and development, for
3 example. And I think at this point many of those kinds
4 of sections are there as a possible activity that the
5 committee might undertake. And so, you know, I think
6 the Proponent Committee has not, you know, is very
7 willing to wait for the first administrative committee
8 to be seated to determine to what extent they want to
9 involve themselves in some of those activities.

10 Q. Can you talk about some of the things
11 that you're familiar with that are normal and customary,
12 some types of expenses that committees have?

13 A. Well, normal and customary expenses would
14 be management, you know, hiring a managing firm to
15 administer the provisions of the order, expenses for
16 holding meetings, travel expenses to bring committee
17 members and alternates to meetings, additional
18 administrative-type expenses in terms of supplies,
19 copying, mailing, phones, and so forth. It's not
20 unusual for part of that administrative expense to
21 include travel for a field man to visit growers and
22 handlers, you know, in the process of their duties to
23 assure compliance and help the industry understand and
24 abide by the provisions of the order.

25 Q. And handlers are assessed under the
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1 marketing orders. Is that correct?

2 A. That's correct.

3 Q. In your experiences, in your experience
4 do the benefits of paying the assessment outweigh these
5 costs usually?

6 A. In my experience they definitely
7 outweigh, yeah, the costs. The benefits outweigh the
8 costs. Yes.

9 Q. Were you involved in the discussion on
10 how they were going to determine the assessment weight,
11 the assessment for handlers?

12 A. Yes.

13 Q. Could you explain what the alpha acid
14 factor is then?

15 A. The alpha acid factor is a factor
16 determined at the time of -- that the marketing policy
17 is established, and it's a factor that's applied to each
18 variety of hops, which seeks to be the typical or
19 average amount of alpha acid for that particular
20 variety. And that is established each year for each
21 variety of hops to give growers an indication, a fairly
22 clear indication of how much, how many pounds of hops
23 they can produce that will result in the approximate
24 amount of alpha acid that they -- that the saleable
25 represents.

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1 Q. Is it common from state to state that a
2 certain variety of hops would have similar percentages,
3 alpha acid percentages?

4 A. You mean the same variety grown in one
5 state or another state?

6 Q. Yes.

7 A. You know, I'm not an expert on that. I
8 assume that they would be very similar, but I can't say
9 for sure.

10 Q. So what they would -- I'm trying to get
11 at how they actually go about coming up with an
12 equitable percentage for each variety, and if that's
13 going to be -- how that's going to be agreed upon.

14 A. Well, those averages, I think those alpha
15 acid percentages are a matter of record. I think one of
16 the pluses in the hop industry is that there's an
17 abundance of record keeping and statistical information,
18 and with state commissions and state inspection services
19 maintaining records on alpha acid content, I think it's
20 going to be a fairly straightforward process for the
21 committee to determine, for example, a three-year
22 average of alpha acid for any particular variety based
23 on statistical information that's already a matter of
24 record.

25 Q. And it isn't generally a controversial or

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1 disputed number that comes...

2 A. Correct.

3 Q. ...it's usually an agreed-upon number?

4 A. Correct.

5 Q. Why is it more equitable to determine
6 assessments on the alpha acid percentage rather than the
7 quantity of hops received?

8 A. Well, I think the reason that the alpha
9 -- that saleable quantity is based on alpha acid is
10 because alpha acid is a component that is universal
11 across all varieties, and therefore, by establishing a
12 saleable percentage or a quantity based on alpha acid,
13 an umbrella is created that covers all varieties,
14 allowing individual growers the flexibility of
15 determining which varieties they would like to produce
16 under that one umbrella of alpha acid.
17 And so I think that it -- the intent and the reason that
18 this was developed was to allow as much flexibility as
19 possible to the growers to determine what they would
20 grow, what varieties they would grow, how much of those
21 varieties they would grow, and when.

22 Q. Do you think that might be cumbersome to
23 administer since there are so many varieties of hops?

24 A. I think just the opposite. I think it
25 simplifies the ability to administer the order, because

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1 the regulated product is just one thing, alpha acid, and
2 it doesn't really matter which variety is being
3 marketed. The saleable certificates won't enumerate
4 different varieties, and there won't be different
5 allotment certificates for each variety. There will
6 just be one allotment certificate containing the pounds
7 of alpha acid for that particular grower, and he will be
8 able to market any variety that he happens to grow that
9 year under the single certificate.
10 So I think it streamlines and simplifies the
11 administrative part.

12 Q. Could you explain why there would be the
13 need to put a provision in there for interest and late
14 payment charges?

15 A. Just simply to encourage timely payment
16 of assessments that are due the committee. You know,
17 the provision is there that allows penalty for late
18 payment, and that provides incentive to get the payments
19 in on time.

20 Q. There's a provision in -- under the
21 assessments allowing the committees to borrow money.
22 What types of situations would a committee need to
23 borrow money?

24 A. I think essentially only in the beginning
25 stages, you know, for start-up money. As the committee

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1 gets established and incurs expenses in that process,
2 they will likely, I don't think it would be unusual for
3 them to be in a position where they would have to borrow
4 some money to cover those start-up expenses.
5 Other than that I can't foresee too many, you know, any,
6 really, any circumstances where the committee would
7 borrow money. I think most committees would -- and I'm
8 sure this one would be the same, are committed to being
9 very sound financially to establishing a working reserve
10 fund that approximates one year's operating expenses,
11 and to, you know, run on a cash basis.

12 Q. Why is one year determined to be an
13 adequate reserve?

14 A. Oh, a couple of reasons. I think one is
15 precedent. That's, you know, a typical amount that is
16 established for most marketing orders, and I think
17 secondly that it's logical to have approximately one
18 year to cover expenses in the event of a low sales year,
19 for example, which would reduce the amount of income for
20 any particular year. One year's reserve should be
21 adequate to cover those kinds of unexpected decreases in
22 income.

23 ***

24 MS. FINN: Thank you. That's all I have.

25 MR. CHRISTENSEN: Thank you.

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1 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.
2 Finn. Ms. Dec.

3 ***

4 BY MS. DEC:

5 Q. Mr. Christensen...

6 A. Yes.

7 Q. ...I know you have quite a bit of
8 experience in administrative marketing orders. Are you
9 involved with administering any right now?

10 A. I am.

11 Q. And which one would that be?

12 A. I administer the Spearmint Marketing
13 Order.

14 Q. And that order is producer allotments?

15 A. Correct.

16 Q. Somewhat similar to this proposal?

17 A. Correct. Uh-huh.

18 Q. Could you tell me how much the spearmint
19 oil budget is on an annual basis?

20 A. Our annual budget right now is about
21 \$170,000.

22 Q. And would you have an opinion as to
23 whether the hop program could be administered for about
24 that, more than that, less than that?

25 A. You know, that's a real estimate, not
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1 knowing all of the activities that that committee might
2 choose to be involved in, but my rough estimate is that,
3 yeah, for approximate, something under \$200,000 annually
4 I think that this kind of a program could be ably
5 administered.

6 ***

7 MS. DEC: Thank you.

8 MR. CHRISTENSEN: Uh-huh.

9 ADMINISTRATIVE LAW JUDGE: Thank you, Ms. Dec.
10 Ms. -- Dr. Hinman.

11 DR. HINMAN: Yes.

12 ***

13 BY DR. HINMAN:

14 Q. Mr. Christensen, you stated the alpha
15 acid factor, the industry-wide average by variety.
16 Would you have available a list for say a recent year
17 for which complete data is available of such a list of
18 factors or averages?

19 A. I don't. I don't have such lists. I
20 don't know if they're available. Are they available?
21 I'm being told they are available. Yes.

22 ***

23 MR. MONAHAN: The Proponent's Committee would
24 be happy to supplement and amend the record with an
25 exhibit that we would deliver in Yakima.

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1 DR. HINMAN: Thank you.

2 ADMINISTRATIVE LAW JUDGE: Mr. Broadbent.

3 MR. BROADBENT: Yes.

4 ***

5 BY MR. BROADBENT:

6 Q. Who would ultimately be liable if the
7 committee or a committee employee incurred an expense
8 that wasn't deemed reasonable, necessary, or in the
9 budget? Ultimately if the USDA determined if it was
10 unreasonable or unnecessary.

11 A. Who would be liable for an expense that,
12 who, the committee itself incurred?

13 Q. Uh-huh.

14 A. That was...

15 Q. Yes.

16 A. ...or the administrative or the
17 management of the committee?

18 Q. Either the committee or committee
19 employee.

20 A. Well, the -- most management firms are
21 bonded to cover such actions. If the committee -- I
22 guess I'm not -- you'll have to explain to me what kind
23 of an expense you're talking about. The committee
24 itself incurred an expense that wasn't authorized? Give
25 me an example. I don't know...

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1 Q. I guess mostly this is -- would be
2 concerning a committee employee.

3 A. You know, a committee employee, you know,
4 is -- ought to be, I think, the committee's
5 responsibility is to make sure that employees are bonded
6 and insured against any kind of misrepresentation or
7 inappropriate use of funds to cover that.
8 Does that answer your...

9 Q. That covers it. Yes.

10 A. ...question or -- okay.

11 Q. And then with regard to late charges,
12 would they be more practical in nature, do you envision
13 them being more in terms of interest charges or
14 interest, reflecting interest or punitive in nature to
15 make sure that everybody pays on time?

16 A. Well, I just -- I would envision them to
17 be more interest. I think that the approach that at
18 least I would recommend be taken is one of seeking to
19 cooperatively work out the problem to make sure that due
20 notice is given and that the affected handler
21 understands exactly what is expected of him, the amount,
22 and when it should have been paid and proceed, you know,
23 step by step in a process of working together with him
24 to get the payment. If all of that fails, then, you
25 know, late charges would be followed by more punitive

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1 action.

2 ***

3 MR. BROADBENT: Thank you.

4 MR. CHRISTENSEN: Uh-huh.

5 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

6 Broadbent. Ms. Deskins.

7 ***

8 BY MS. DESKINS:

9 Q. Mr. Christensen, in Section 991.31, the
10 term, first handler, is used a couple of times.

11 A. Uh-huh.

12 Q. And also the term, handler. Are they
13 supposed to have different meanings?

14 A. Well, I think in terms of, you know,
15 living assessments that it -- there's an important
16 distinction to be made by first handler. That is the
17 handler that acquires the alpha acid from the producer.
18 That's the first handler, you know. What happens to it
19 after that could occur among other handlers who are not
20 necessarily the first handler, and so I think it's just
21 a distinction to show exactly at what point the
22 assessment is levied.

23 Q. Well, then should the definition of
24 handler -- in the definition section do you need a
25 definition that defines what a first handler is?

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1 A. I don't think so. I think that the term
2 itself explains it adequately, that it's the first, you
3 know, the first person to acquire the product from the
4 producer is the first handler. But if you...

5 Q. Okay. So someone -- I'm just trying to
6 understand, though. Someone reading this should know
7 that that's what that term means?

8 A. I think so. I'm inclined to feel that
9 way. Uh-huh.

10 Q. Okay. And also in 991.318 it says that
11 hops shall be paid to the committee upon demand. Does
12 that then require the committee to give an invoice to
13 handlers so that they know they need to pay their
14 assessments?

15 A. Correct.

16 Q. Okay. And also I don't think I caught
17 all of your answer to Ms. Finn about borrowing money.
18 Did you say you anticipate that after the initial year
19 there won't be a need to borrow money?

20 A. I would hope so. Uh-huh.

21 Q. Okay. What happens if there's -- people
22 had mentioned there was a problem with powdery mildew
23 one year. What happens if there's a short crop because
24 there's a problem like that, and the committee doesn't
25 have sufficient funds? Will they be able to borrow

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1 money?

2 A. They will. They have the authority to
3 borrow money later on, you know, after that first year,
4 but I think the question was what would I typically see
5 as a reason for a committee to have to borrow money, and
6 the most dominant reason that I know of is start-up
7 money to get established. And certainly as soon as
8 possible the committee would build a one-year reserve
9 fund.

10 ***

11 ADMINISTRATIVE LAW JUDGE: All right. Let's
12 pause to change the tape at 2:51.

13 ***

14 [Tape 4 Side 1]

15 ***

16 ADMINISTRATIVE LAW JUDGE: All right. We're
17 back on record at 2:52.

18 ***

19 BY MS. DESKINS:

20 Q. Because as this section is written now it
21 doesn't allow the committee to borrow money except for
22 start-up costs.

23 A. Can you point out to me what...

24 Q. Yeah.

25 A. ...part?

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1 Q. If you look at 991.31B.

2 A. Uh-huh.

3 Q. And it says here, "In order to provide
4 funds for the administration of this part before
5 sufficient operating income is available for
6 assessments, the committee may accept advanced
7 assessments and may also borrow money for such purpose."

8 A. You know, I think that that could be
9 applied on a year-to-year basis, so I, you know, my
10 thinking, although I've never -- we've never had to do
11 that, we've never had to borrow money after the initial
12 start-up in my experience, you know, the rate of
13 assessment is an annual activity. And so, "The
14 Secretary shall fix the rate of assessment to be paid by
15 each handler in order to provide funds for the
16 administration of this part before sufficient operating
17 income is available from assessments." You know, I
18 think I would read that as that could -- that authorizes
19 the borrowing of money on a year-to-year basis.

20 ***

21 MS. DESKINS: I have no further questions.

22 MR. CHRISTENSEN: Okay.

23 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.

24 Deskins. Other questions by representatives of USDA?

25 There are none.

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1 Mr. Christensen -- Mr. Moody, I'll get to you
2 in just a moment.

3 ***

4 BY ADMINISTRATIVE LAW JUDGE:

5 Q. Is there a built-in incentive to switch
6 to a lower alpha content variety of hops?

7 A. No, I don't think so, you know. I think
8 that each producer is going to receive an allotment base
9 based on varieties that he has historically grown and
10 that, you know, with that allotment base I think, you
11 know, I think he will continue to market those same
12 varieties regardless of their alpha content.

13 Q. And you don't see that he could perhaps
14 make more money by switching to a lower alpha content?

15 A. Well, I know he can sell more pounds of
16 hops that are lower in alpha, but -- and I'll have to
17 defer to those who know more about the market
18 conditions, but I would assume that a lower -- a variety
19 that has a lower alpha content probably also has a lower
20 price that would offset that incentive a little bit.

21 ***

22 ADMINISTRATIVE LAW JUDGE: All right. Thank
23 you. Mr. Moody, you had your hand up.

24 MR. MOODY: Thank you, Your Honor.

25 ***

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1 BY MR. MOODY:

2 Q. Mr. Christensen, what is the event that
3 triggers the obligation to pay assessments? Is it good
4 delivery of hops from the producer to the handler or the
5 sale of hops by the handler?

6 A. It's the sale of hops.

7 Q. By the handler?

8 A. To the handler by the producer.

9 Q. All right. What about a situation like
10 Yakima Chief, where the producers are delivering on a
11 consignment basis?

12 A. The definition of handle includes the
13 action of acquiring hops, so when the -- Yakima Chief,
14 for example, acquires hops from the producer, handling
15 has occurred, and that triggers the assessment.

16 Q. All right. So in the case of Yakima
17 Chief, even though the hops may not be sold by Yakima
18 Chief until some time in the future, the assessments are
19 due upon delivery of the hops from the producer to the
20 handling facility?

21 A. That's correct.

22 Q. All right. Now, for somebody else who's
23 not with Yakima Chief, but they're just having, you
24 know, a contract with a dealer, same answer? Are they
25 -- assessments are due when they're delivered to the

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1 dealer?

2 A. Correct.

3 Q. So a grower, a consignment-based grower
4 and a contract-based grower would be treated identically
5 with respect to the obligation to pay assessments?

6 A. That's correct.

7 Q. All right. But the obligation to pay the
8 assessments is on the handler, right? So Yakima Chief
9 would say the assessments in the example we were talking
10 about?

11 A. That's correct.

12 Q. And in the -- and the dealer would -- in
13 the contract case the dealer would pay the assessments.
14 Is that correct?

15 A. Yeah. That's correct.

16 Q. All right. Now, is it also correct that
17 the preparation of hops for market by producer is not
18 handling?

19 A. Preparation by the producer?

20 Q. Uh-huh.

21 A. Is not handling. That's correct.

22 Q. All right. So what about -- so a
23 producer can take his hops of his own production and
24 convert them to alpha acid pounds and store them, and no
25 handling has taken place?

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1 A. Well, I guess that we need to define -- I
2 need to understand what you are defining as preparing
3 for market. A producer preparing hops for market in my
4 mind, as I answered that question, was harvesting them
5 and getting them in a bale or a form that -- in which
6 they can be delivered to a handler.

7 Q. All right. But I think we had testimony
8 this morning that hops are actually marketed in all
9 sorts of forms, including raw hops, pellets, and
10 extracts, so that they're actually -- hops are actually
11 marketed in all sorts of different forms. And so given
12 that testimony the preparation for market by a producer
13 would certainly include potentially a whole variety of
14 functions, including the extraction of the alpha acid.

15 A. The answer -- my answer to that is that
16 if a producer does that, goes through those steps of
17 preparation, that he has not handled those hops.

18 Q. Okay. So when they're, let's say the
19 producer does the extraction and stores the alpha acid
20 for awhile, and then some time later delivers that alpha
21 acid to a dealer, is that the act that would trigger
22 then payment of assessments by the dealer?

23 A. If handling occurs when he delivers those
24 -- that hop product to the dealer, then the assessment
25 needs to be paid. If handling occurs at that point.

1 Q. All right. And am I correct that
2 handling would occur at that point, when the producer
3 delivers the pounds of alpha acid to a dealer?

4 A. Not necessarily. I think if it's
5 delivered for storage, for example, handling has not yet
6 occurred.

7 Q. Oh. All right. I'm looking at the
8 definition of handle here in point 08, and it says
9 handle means, "To prepare hops for market," but later
10 on, other than a producer doing that. And it also says,
11 "Acquire hops from a producer." It doesn't really say
12 acquire, you know, alpha acid from a producer, but we'll
13 get past that for a second. But it seems that if a
14 dealer gets some alpha acid from a producer for storage
15 purposes, that that still is a handling function.

16 ***

17 MR. MONAHAN: If I could just ask for
18 clarification, Jim. Under your hypothetical scenario is
19 the handler acquiring title before storage, because I
20 think the answer -- perhaps you're not communicating.

21 MR. MOODY: Well, in my earlier questions Mr.
22 Christensen said that consignment or contract sales
23 would be treated the same, so I don't -- given his
24 earlier answer I don't think it makes any difference at
25 all whether the dealer is acquiring title.

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1 MR. CHRISTENSEN: Well, I think it does
2 because it goes to the intent of the transfer of the
3 hops from the producer to whether it's a consigned,
4 consignment company or a handler. In either case I
5 think if the intent is a transfer of ownership, then
6 that's when handling occurs. If the intent is not for
7 transfer of ownership, then handling has not occurred.

8 MR. MOODY: Oh. All right.

9 ***

10 BY MR. MOODY:

11 Q. Well, in a consignment situation do you
12 understand that the consignee actually takes title to
13 the commodity?

14 A. No, I don't think he takes title to it,
15 but I think that he, the grower transfers those hops
16 into the control of that consignment company for the
17 purpose of transferring ownership.

18 Q. Okay. So then does -- your earlier
19 answer stands that it doesn't -- a consignment grower
20 and a contract grower are treated the same?

21 A. Correct.

22 Q. Okay. So it doesn't matter whether
23 actual legal title shifts to the handler?

24 A. I think that's correct.

25 Q. Okay. All right. Then back to where I

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1 was then before. When the producer actually prepares
2 the hops for market by extracting the alpha acid and
3 delivers at a later time the alpha acid to a dealer,
4 that would be a handling of those hops, and that would
5 trigger the obligation of the dealer to pay the
6 assessment at that point. Is that correct?

7 A. I don't believe so, because as I've
8 stated the intent in that situation, the way you've
9 described it is not that a transfer of ownership
10 necessarily takes place.

11 Q. Okay. Now I'm confused. First you tell
12 me that transfer of ownership doesn't matter.

13 A. No. That's not what I said.

14 Q. Okay. Can we say that legal title and
15 transfer of ownership, I'm using those to be
16 interchangeable. Legal title and ownership are the same
17 concept.

18 A. Okay.

19 Q. Okay?

20 A. All right.

21 Q. All right. Can you agree with me on
22 that?

23 A. I think so.

24 Q. Okay. In the first instance we're
25 delivering raw hops; one on a consignment basis, one on

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1 a contract basis, from a grower to in the first case a
2 consignee such as Yakima Chief, and in the second case
3 to a contract dealer. Okay. Both of those acts
4 constitute handling. Is that correct? And both of
5 those acts would trigger the obligation of the handler
6 to pay the assessments.

7 A. That's the way I would interpret it.

8 Q. Okay.

9 A. Yes.

10 Q. All right. Now, rather than delivering
11 the raw hops, we're going to change my hypothetical to
12 where the producer is delivering extracted alpha acid.

13 A. Okay.

14 Q. Okay. Does that act of delivery to a
15 handler trigger the obligation of the handler to pay the
16 assessments?

17 ***

18 MR. MONAHAN: Can I just ask for
19 clarification? If the delivery assumes either for
20 purchase by the dealer or for consignment, because I
21 think there's a third alternative that Mr. Christensen
22 is referring to.

23 MR. MOODY: Okay. Right. Just -- that would
24 be correct.

25 ***

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1 BY MR. MOODY:

2 Q. It would be either for ultimate sale by
3 the dealer or on either a consignment or a contract
4 basis.

5 A. For ultimate sale? What do you mean?
6 You mean in other words for storage for a time?

7 Q. Well, physical movement of hops -- sorry.
8 Of the acid from the producer's facility to the
9 handler's facility. Okay. One on a consignment basis,
10 two on a contract basis.

11 A. You know, bottom line is this. You know,
12 I don't think I've followed your entire scenario, but if
13 hops or hop product are delivered for purchase or
14 consignment to be purchased, then handling has occurred.
15 If those are delivered to a handler for storage, then
16 handling has not occurred.

17 Q. Okay. Storage by the producer then
18 handling hasn't occurred?

19 A. Storage by the handler. The producer
20 delivered it to the handler for storage without an
21 arrangement for purchase, then handling has not
22 occurred.

23 Q. Okay. Well, when -- in that case where
24 the producers deliver raw hops to a handler for storage,
25 by the handler, when does handling occur?

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1 A. Handling occurs when ownership is
2 transferred from the producer to the first handler.
3 That's when handling occurs.

4 Q. Okay. Now, I hate to interrupt you
5 there, but I'm confused again, because when you consign
6 hops to a handler, like Yakima Chief, that is not a
7 transfer of ownership, but you're telling me a minute
8 ago that that is a handling.

9 A. I'm telling you that that delivery is for
10 the purpose of transferring ownership, even though it
11 may not occur at that day, that time, that ownership
12 will be transferred.

13 Q. Okay. But is the -- if I deliver them on
14 Monday to Yakima Chief on a consignment basis, has
15 handling occurred on Monday?

16 A. Yes.

17 Q. Okay. So Yakima Chief then owes the
18 assessments?

19 A. Correct.

20 Q. Even though they haven't been sold.

21 A. Correct.

22 Q. Okay. If I deliver to Yakima Chief for
23 storage on Monday, has handling occurred?

24 A. You know, I guess I don't know all of how
25 Yakima Chief, you know, operates and what kind of

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1 arrangements they can make with their producers, and so,
2 you know, I'm not going to try to ascertain every
3 situation there as being handling or not being handling.
4 You know, I think that as -- that the committee would
5 have to make that determination, not only in the case of
6 Yakima Chief but probably in other situations as to
7 exactly when handling occurs.

8 ***

9 MR. MOODY: Okay. I think the reason for my
10 confusion and maybe the Proponents can think about this
11 over the weekend and answer it next week is we're -- I'm
12 trying to compare two situations. One is physical
13 delivery, as to whether that triggers handling, and two
14 is transfer of legal title and when and whether that
15 triggers handling. And I think that's the reason for
16 -- I apologize. That's the reason, at least for my
17 confusion, because your -- sometimes in your answers and
18 Mr. Monahan's questions were kind of mixing those two
19 concepts.

20 ADMINISTRATIVE LAW JUDGE: And Mr. Moody, do
21 you have a question to follow...

22 MR. MOODY: Okay.

23 ADMINISTRATIVE LAW JUDGE: ...that?

24 MR. MOODY: All right.

25 ***

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1 BY MR. MOODY:

2 Q. Well, but getting back to where I was
3 trying to go, I was trying to get to when you deliver
4 alpha acid, when the delivery of alpha acid constitutes
5 handling, how is the handler supposed to figure out how
6 much assessment is due.

7 A. The assessment is -- let me read it right
8 from Section 31A. "Each handler's pro rata share for
9 each variety of hops sold shall be the rate of
10 assessment fixed by the Secretary times the number of
11 pounds of that variety of hops sold times the alpha acid
12 factor for that variety of hops, which the handler
13 handles at the first -- as the first handler thereof."

14 Q. Right. My -- this is really my last
15 question, but if you're delivering pounds, you said the
16 formula is pounds of hops times alpha acid factor equals
17 assessments. Okay.

18 A. Times the assessment rate. Uh-huh.

19 Q. Times the assessment rate. Now, I'm
20 -- in my situation I'm delivering pounds of alpha acid,
21 not pounds of hops. So there's nothing to multiply in
22 that formula.

23 A. Then the formula becomes simpler in that
24 case. It's the number of pounds of alpha acid times the
25 assessment rate.

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1 Q. But you don't necessarily know what
2 variety of hops those pounds of acid...

3 A. Doesn't...

4 Q. ...alpha acid came from.

5 A. It doesn't matter.

6 Q. Okay.

7 ***

8 MR. MOODY: I think that's all my questions
9 for now.

10 MR. CHRISTENSEN: All right.

11 MR. MOODY: All right.

12 ***

13 BY MR. MOODY:

14 Q. My colleague informs me that there is in
15 turning hops into alpha acid there's a shrinkage factor
16 that comes into play. How would that come into play in
17 the assessment formula?

18 A. A shrinkage factor?

19 Q. Yes.

20 A. I don't know.

21 Q. Okay.

22 A. Because I'm not familiar with that.

23 Q. Okay.

24 A. That term.

25 ***

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1 MR. MOODY: Thank you, Mr. Christensen.

2 MR. CHRISTENSEN: Uh-huh.

3 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
4 Moody. Additional questions for Mr. Christensen on this
5 section? Yes. Ms. Finn.

6 MS. FINN: Thank you.

7 ***

8 BY MS. FINN:

9 Q. In Section 31F the statement reads, "The
10 committee may establish rules and regulations necessary
11 and incidental to the administration of this section."
12 Is that intended that the committee would establish the
13 rules and regulations or that the committee would
14 recommend rules and regulations to the Secretary and go
15 through out informal rule-making process?

16 A. It was intended that the committee would
17 establish those rules and regulations. Understanding
18 that as with all rules and regulations that the
19 committee establishes, the Secretary has the right to
20 disapprove them, but the intent was that these rules and
21 regulations which would include forms and you know,
22 reporting procedures and so on would be established by
23 the committee.

24 Q. But it would go through the -- for
25 Secretary's approval. Is that correct?

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1 A. That wasn't the intent. It really wasn't
2 the intent that all of those various steps that need to
3 be taken would be submitted for informal rulemaking.

4 Q. So it could just be policy decisions made
5 by the committee?

6 A. Correct.

7 Q. And not sent through the Department.
8 Would something like -- would establishing an assessment
9 rate...

10 A. Certainly the assessment rate needs to be
11 approved by the Secretary. Yes.

12 ***

13 MS. FINN: That's all I have.

14 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.
15 Finn. Any other questions from USDA representatives?
16 Any other questions from those here against the
17 proposals? Mr. Monahan, anything further?

18 MR. MONAHAN: I'm going to see if I can help
19 clear up the issue that confounds Mr. Moody.

20 ***

21 BY MR. MONAHAN:

22 Q. Mr. Christensen, you talked about two
23 specific examples in which handling occurred. The first
24 is which -- is in which hops or hop products are
25 delivered to a dealer on a purchase and sale agreement.

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1 A. Yes.

2 Q. That's...

3 A. That's one.

4 Q. ...when handling occurs and when the
5 assessment is due as it were.

6 A. Uh-huh.

7 ***

8 ADMINISTRATIVE LAW JUDGE: That was a yes?

9 MR. CHRISTENSEN: That is a yes.

10 ADMINISTRATIVE LAW JUDGE: Thank you.

11 ***

12 BY MR. MONAHAN:

13 Q. The second situation is when hops or hop
14 products are delivered to a handler on consignment. Is
15 that right?

16 A. Yes.

17 Q. Okay. The third situation that, at least
18 as I understand it, was when hops are delivered to a
19 facility to remain in storage. Is that right?

20 A. Yes.

21 Q. At least as you were describing that
22 term, is that a situation where the producer retains
23 title, ownership to the hop or hop product?

24 A. Yes.

25 Q. Retains the right to sell it to any

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1 person, whether it be that particular -- the facility or
2 an independent brewer or whomever?

3 A. Yes.

4 Q. Simply pays a rental charge for the
5 storage to this dealer or handler for -- who has agreed
6 to store it for him?

7 A. Yes.

8 Q. Okay. And in that case handling has not
9 yet occurred.

10 A. Handling has not occurred. Correct.

11 Q. Sir, we talked this morning in the
12 definitions section about those circumstances in which a
13 producer is also a handler. Correct?

14 A. Yes.

15 Q. And the assessments under this section
16 are to be paid by the handler, which in many instances
17 will be the producer himself.

18 A. That's correct.

19 Q. Him or herself. Excuse me. Is there
20 anything in the proposal that would prevent a
21 dealer/handler from paying the assessment due and then
22 in turn assessing it against the producer?

23 A. No. There's nothing to prevent that.

24 Q. Okay. And so it could very well be that
25 the producers end up bearing the burden for all the

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1 assessments paid under this proposal?

2 A. That's correct. In fact, that's more
3 typical of what occurs in these kind of programs.

4 Q. In that case the handler acts primarily
5 as sort of a pass-through?

6 A. Correct.

7 Q. There were some discussions about whether
8 or not it was advantageous for a person to grow aroma
9 hops because of the alpha factors, and I just want to
10 run a couple of hypotheticals at you. Actually, it's
11 just one.

12 If I deliver for sale on a purchase and sale agreement
13 1,000 pounds of aroma hops, do I pay the same assessment
14 as if I delivered 1,000 pounds of high-alpha hops?

15 A. No. You pay a much lower assessment.

16 Q. For?

17 A. For the aroma hops. Presumably, you
18 know, as I understand it, the alpha acid factor for
19 aroma hops would be much, much lower.

20 Q. Okay. So at least in terms of delivery
21 of equal amounts of pounds of raw hops the aroma growers
22 are going to bear a much lower assessment burden.

23 A. That's correct.

24 ***

25 MR. MONAHAN: That's all I have, Your Honor.

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1 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
2 Monahan. Any other questions for Mr. Christensen on
3 this particular section? Yes. Mr. Roy.

4 ***

5 BY MR. ROY:

6 Q. Mr. Christensen.

7 A. Yes.

8 Q. In most commodities in other, like in
9 commissions and grower associations in hops, usually the
10 assessment is by pound. Correct?

11 A. Correct.

12 Q. So in the case of like the Washington
13 State Hop Commission, the assessment is by pounds, so
14 many cents per pound. So aroma hop that produces less
15 versus a high-alpha hop that produces higher, the
16 assessment ratio is similar to the alpha factor. So in
17 other words, you know, if you're like -- you pay so many
18 cents per pound, and the aroma hop yields X number of
19 pounds per acre, you would be less than if you had...

20 A. You're talking about the alpha acid?

21 Q. No. I'm talking about just in -- like
22 the current hop commission, the same ratio. I mean, the
23 current hop commission has an assessment of per pound of
24 raw hops.

25 A. Okay.

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1 Q. So the assessments would be -- the ratios
2 would be similar in the alpha factor type.

3 A. I think that's correct, if I understand
4 what you're saying. The aroma yield per acre would be
5 less than the alpha...

6 Q. Uh-huh.

7 A. ...yield per acre, so therefore, yeah,
8 the aroma grower would pay less total assessment.

9 Q. Okay. Thanks.

10 A. Yeah.

11 ***

12 ADMINISTRATIVE LAW JUDGE: Any other questions
13 of Mr. Christensen. Yes, Ms. Razick.

14 ***

15 BY MR. RAZICK:

16 Q. Under Section 991.30 toward the end it
17 says that there's a recommendation made to the Secretary
18 as to the rate of assessment for each year. So is the
19 rate of assessment for each variety that is recommended
20 to the Secretary?

21 A. No. It's the rate of assessment per
22 pound of alpha acid, and that rate would apply to all
23 varieties.

24 Q. So how would the rate differ if it's an
25 aroma variety or an alpha, high-alpha?

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1 A. The rate per pound of alpha acid doesn't
2 vary. It's the same, but if an aroma variety has a much
3 lower percent of alpha acid per pound of raw hops, then
4 the assessment rate per pound of raw hops is going to be
5 much lower for an aroma variety than for a high-alpha
6 variety.

7 ***

8 MS. RAZICK: Thank you.

9 ADMINISTRATIVE LAW JUDGE: Any additional
10 questions for Mr. Christensen on this topic? There
11 being none, Mr. Monahan, you may move to the next
12 section.

13 MR. MONAHAN: Thank you, Your Honor.

14 ***

15 BY MR. MONAHAN:

16 Q. Mr. Christensen, could I get you to jump
17 ahead to Section 991.60.

18 A. Okay.

19 Q. And would ask you to describe what we
20 find at Sections 991.60 through 991.63, and read them
21 into the record, sir.

22 A. Okay. 991.60 reports, Section A,
23 inventory. "Each handler shall file with the committee
24 or its designee a certified report showing such
25 information as the committee may specify with respect to

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1 any hops which were held by such handler on March 1 and
2 September 1 of such other -- or such other dates as the
3 committee may designate." B, receipts. "Each handler
4 shall upon request of the committee file with the
5 committee a certified report showing the quantity of
6 hops handled." C, other reports. "Upon the request of
7 the committee each handler shall furnish to the
8 committee such other information as may be necessary to
9 enable it to exercise its powers and perform its duties
10 under this part."

11 Section 991.61, records. "Each handler shall maintain
12 such records pertaining to all hops handles as well
13 substantiate the required reports. All such records
14 shall be maintained for not less than two years after
15 the termination of the marketing year to which such
16 records relate."

17 Section 991.62, verification of reports and records.
18 "For the purpose of assuring compliance with record
19 keeping requirements and verifying reports filed by
20 handler, the Secretary and the committee through its
21 duly-authorized employees shall have access to any
22 premises where applicable records are maintained, where
23 hops and or hop products are received or held, and at
24 any time during reasonable business hours shall be
25 permitted to inspect such handlers, handler premises and

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1 any and all records of such handlers with respect to
2 matters within the purview of this part."

3 Section 991.63, confidential information. "All reports
4 and records furnished or submitted by handlers to or
5 obtained by the employees of the committee which contain
6 data or information constituting a trade secret or
7 disclosing the trade position, financial condition, or
8 business operations of the particular handler from whom
9 received, shall be treated as confidential, and the
10 reports and all the information obtained from records
11 shall at all times be kept in the custody and under the
12 control of one or more employees of the committee who
13 shall deliver such information to no person other than
14 the Secretary."

15 ***

16 ADMINISTRATIVE LAW JUDGE: Was that disclose?

17 MR. CHRISTENSEN: Did I -- yes.

18 ***

19 BY MR. MONAHAN:

20 Q. First I'll just ask you the general
21 question. Is there anything unusual or unique about
22 these sections that was tailored to fit the needs of the
23 hop industry?

24 A. There is not.

25 Q. I want to ask you about Section 991.60A,
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1 which refers to the handlers' obligation to report
2 inventory. It indicates that the report must include
3 hops which were held by such handler. In the instance
4 of this handler who is renting storage space to a
5 producer, is that going to, in your opinion or at least
6 as you understand it, is that going to constitute
7 inventory held by that handler? Or is that being held
8 by the producer?

9 A. I would interpret that to be held by the
10 producer.

11 Q. Under B, receipts, do I understand that
12 it's the receipts provided by the handler to the
13 commission that will enable the commission to assess the
14 handler?

15 A. That's correct. To the committee.
16 Uh-huh. The handler would supply receipts to the
17 committee showing the quantity of hops that they
18 handled.

19 Q. Okay. And that would have to -- they'd
20 have to show quantity and variety, would they not?

21 A. Correct.

22 Q. Are you able to comment at all, sir, on
23 the purpose of the confidentiality provision?

24 A. Well, just in general the committee is
25 obligated to use the utmost care in making sure that all

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1 proprietary information is kept confidential. It's
2 extremely important.

3 ***

4 MR. MONAHAN: Thank you, Mr. Christensen. I
5 would yield the floor, Your Honor.

6 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
7 Monahan. Questions on these sections for Mr.
8 Christensen? I'd ask first from those who are here in
9 favor of the proposals.

10 There are none. For those who are here in a
11 position against the proposals. Mr. Moody.

12 ***

13 BY MR. MOODY:

14 Q. Just one question, Mr. Christensen.
15 Would the handlers be required to report price
16 information or whether hops are under contract
17 information?

18 A. Under the language in the order now there
19 is the authority to request that kind of information,
20 but it's not specifically indicated now.

21 Q. All right. So the committee would have
22 the power to ask for that information?

23 A. Yes.

24 ***

25 MR. MOODY: Thank you.

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1 ADMINISTRATIVE LAW JUDGE: Are there
2 additional questions for those contrary to the
3 proposals? There appear to be none.

4 Do the representatives of the USDA have any
5 questions for Mr. Christensen? Ms. Finn.

6 ***

7 BY MS. FINN:

8 Q. Why is it necessary to collect this
9 information from handlers?

10 A. The committee is charged with the
11 responsibility of setting a saleable percentage and
12 saleable quantity each year. In order to do that they
13 need all available information regarding unsold stocks,
14 both at the grower and at the handler level to help them
15 determine needs for additional supplies.

16 Q. Will this reporting create an extra
17 burden on the industry?

18 A. Well, I think that, yeah. I think
19 there's -- there will be some additional efforts
20 required to provide this information. I don't think
21 -- I think mostly in terms of the logistical aspects of
22 getting, collecting the information and providing it to
23 the committee. The information is available. It
24 doesn't require additional efforts, I don't think, in
25 most cases to research and accumulate catalog, if you

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1 will, or chart the information. But obviously there
2 will be a little bit of additional effort required to
3 provide it.

4 Q. Do industry members already file reports
5 with other state agencies or other...

6 A. That's my understanding. Yes. Uh-huh.

7 Q. Is there going to be a requirement that
8 growers file reports?

9 A. Again, these are things that the
10 committee will establish as they put together an overall
11 plan for reporting. I would expect that there would be
12 some reports required from growers in terms of acreage
13 and production.

14 Q. As I read through the provisions, I don't
15 see any requirement for growers, so I didn't know
16 -- since it is a producer allotment program, usually
17 there are some type of...

18 A. There are, and usually those will
19 probably be covered under the areas that talk about
20 application for annual allotment that requires certain
21 information from the growers in order to be able to, you
22 know, obtain their annual allotment certificate. That's
23 where that authority comes from.

24 Q. So it's somewhere else in the order
25 that...

1 A. Yes.

2 Q. ...I haven't seen yet? Okay.

3 A. Correct.

4 ***

5 MS. FINN: Thank you.

6 MR. CHRISTENSEN: Uh-huh.

7 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.

8 Finn. Ms. Dec.

9 ***

10 BY MS. DEC:

11 Q. Just to follow up on Ms. Finn's question,
12 if there are reports required or if producers are
13 required to file information or the committee receives
14 information from producers, that information is -- is it
15 the intent of the Proponents that that information would
16 also be treated as confidential as set forth in Section
17 63?

18 A. Absolutely. Yes.

19 ***

20 MS. DEC: Thank you.

21 ***

22 BY MR. DESKINS:

23 Q. Sir, in Section 991.60A, the term
24 certified report is used. What's -- what do you mean by
25 the term, certified?

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1 A. My interpretation of a certified report
2 is that the committee would ask for some type of
3 certification on behalf of the handler, whether that be
4 a signature or a verification that the information is
5 accurate.

6 Q. Do you mean the handler's supposed to
7 self-certify it, or is there another agency that's
8 supposed to certify it?

9 A. No. I interpret that that the handler
10 would self-certify that.

11 ***

12 MS. DESKINS: I have no further questions.

13 ADMINISTRATIVE LAW JUDGE: All right. Other
14 questions? Ms. Finn.

15 ***

16 BY MS. FINN:

17 Q. Do the reports that the sub-committee
18 would develop to use on handlers and growers, would they
19 have to be approved by the Department?

20 A. Well, the language does not state that,
21 and I guess I go back to my answer to the last question,
22 and that is that, you know, there will be, of course, a
23 Department representative at all committee meetings and
24 all sub-committee meetings reviewing these procedures as
25 they're set up. And so the Department will have the

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1 opportunity to inspect and oversee that entire procedure
2 and has the right of disapproval of any of those
3 procedures.

4 Q. Do you know that the US Department of
5 Agriculture has to go through the Office of Management
6 and Budget to report all reporting burdens...

7 A. Yes.

8 Q. ...to the public?

9 A. And in that venue, yes, all the forms
10 developed by the committee, of course, would be
11 submitted for OMB review and approval.

12 ***

13 MS. FINN: All right. Thank you.

14 MR. CHRISTENSEN: Uh-huh.

15 ADMINISTRATIVE LAW JUDGE: Additional
16 questions from USDA? No?

17 ***

18 BY ADMINISTRATIVE LAW JUDGE:

19 Q. Mr. Christensen, I want to make sure I
20 understand how the committee is going to be able to
21 determine the saleable if there's no requirement for the
22 growers to report the inventory they have on hand on
23 March 1 and September 1.

24 A. There is authority in the order to
25 require reports from growers on production levels. The

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1 committee will constantly monitor that production, and
2 through the handling procedures will also monitor sales,
3 and therefore, will know what unsold levels of inventory
4 there are that are held by growers.

5 ***

6 ADMINISTRATIVE LAW JUDGE: Thank you.

7 MR. CHRISTENSEN: Uh-huh.

8 ADMINISTRATIVE LAW JUDGE: Any further
9 questions for Mr. Christensen on this issue? There are
10 none. Mr. Monahan.

11 MR. MONAHAN: Thank you, Your Honor. Then
12 we're happy to move ahead to Section 991.70.

13 ADMINISTRATIVE LAW JUDGE: I think it might
14 also be a good time for a break, but before we do that,
15 Mr. Moody.

16 MR. MOODY: Your Honor and Brendan, I don't
17 know if Mr. Christensen is going to be in Yakima next
18 week, I guess he probably is, but there's a number,
19 aside from the three Oregon growers that we know about,
20 I think there's a number of other Oregon growers who've
21 come today to testify, and I just want to make sure they
22 get a chance to be heard.

23 ADMINISTRATIVE LAW JUDGE: All right. Let's
24 do take our break, and I'd ask the two of you to discuss
25 that while we're off record and see if you can agree to

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1 some timetable for the remainder of today, and if not,
2 we'll hear about it when we get back. So please be
3 ready to go at 3:47.

4 ***

5 [Tape 4 Side 2]

6 ***

7 ADMINISTRATIVE LAW JUDGE: We're back on
8 record at 3:48 p.m. Mr. Monahan, did you and Mr. Moody
9 determine how we might proceed?

10 MR. MONAHAN: We both had very good ideas, but
11 they were different ideas, Your Honor.

12 ADMINISTRATIVE LAW JUDGE: Let me hear yours.

13 MR. MONAHAN: I just want to explain briefly
14 why I don't think we were able to come to an agreement.
15 Throughout the process of putting together the proposal
16 that's the subject of these hearings the Proponent's
17 Committee spent a lot of time soliciting input and
18 advice from growers from all the states, both pro and
19 con. And they firmly believe that this proceeding
20 should not be any different. We should hear from
21 everybody, both sides.

22 We've tried to be as flexible and as
23 accommodating as possible to the witnesses, to the
24 orchestrated presentation of the folks in opposition.
25 At some point in time, Your Honor, that does end up

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1 compromising the proceedings from our perspective, both
2 in the ability of the Proponent's Committee to put on a
3 full and complete presentation and maybe even more
4 importantly from the ability of the growers to really
5 get a fair sense of what's going on here. We're looking
6 at the tail end of day three. We've been outpaced in
7 terms of presentation by a factor of about three to one.
8 None of the Oregon growers have yet heard the
9 Proponent's Committee's positions on volume regulations,
10 allotment base, annual allotments, excess alpha and pool
11 requirements. I mean, these are the things that make
12 the marketing order work. Nobody has the benefit of
13 that information.

14 I realize that I sit in the chair of an
15 advocate, but from our vantage point the reason that so
16 much time has been consumed by the opposition is that
17 they've chosen to use the time allotted for cross
18 examination to argue the theory of the case and to
19 trumpet what they see to be the benefits of an
20 unregulated free market system.

21 That's a fine strategy, but the consequence is
22 they consume value hearing time, arguably at the expense
23 of persons that they would parade up to support their
24 position.

25 Now, I'm not suggesting that the Oregon
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1 growers pay the price for the strategies employed by the
2 folks in opposition. I'm mainly expressing frustration.
3 I would ask that Mr. Christensen be allowed to complete
4 his testimony and then we go forward with grower
5 testimony, Your Honor.

6 ADMINISTRATIVE LAW JUDGE: Now, do you have
7 any growers that need to testify today in favor of the
8 proposal?

9 MR. MONAHAN: We did not bring them here. No,
10 Your Honor.

11 ADMINISTRATIVE LAW JUDGE: So they will be in
12 Yakima?

13 MR. MONAHAN: Correct.

14 ADMINISTRATIVE LAW JUDGE: All right. Mr.
15 Moody, how many people do you know of that would like to
16 testify today against the proposal?

17 MR. MOODY: There are five Oregon growers who
18 would like to testify today who have indicated they
19 won't be able to travel to Yakima, and if I understand
20 correctly, Mr. Christensen will be in Yakima anyway.
21 And so I would ask, and I realize there's some
22 unfairness to taking people out of line compared to the
23 "regulars" who are here for all days of the hearing, but
24 I would ask that, you know, given the way USDA has
25 scheduled this in two venues, that the people who by

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1 their own schedules can't come to Yakima at least have a
2 chance to be heard here today.

3 ADMINISTRATIVE LAW JUDGE: All right. Thank
4 you, Mr. Moody. Mr. Christensen, are you going to be
5 available in Yakima?

6 MR. CHRISTENSEN: I will be in Yakima. Yes.

7 ADMINISTRATIVE LAW JUDGE: And how many of the
8 days do you intend to be there?

9 MR. CHRISTENSEN: That's uncertain. I know I
10 have to go back and try to make a living sometime but
11 probably one or two days.

12 ADMINISTRATIVE LAW JUDGE: All right. How
13 much more direct testimony would you anticipate Mr.
14 Christensen's time would take if you cover what you want
15 to cover today with him?

16 MR. MONAHAN: Twenty to 25 minutes of direct
17 testimony, Your Honor, depending on how fast he reads.

18 ADMINISTRATIVE LAW JUDGE: Okay. That
19 together with cross, which there will be some of, would
20 consume the rest of our time until 5:00. Let's talk
21 about whether we want to go late today. Mr. Moody,
22 you've always been willing to go late. I presume that's
23 still true.

24 MR. MOODY: I'm willing to do so, Your Honor,
25 because of the importance that people who want to be

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1 heard be heard. My time is the hearing's time.

2 ADMINISTRATIVE LAW JUDGE: All right. What
3 would you estimate the direct testimony of the five
4 witnesses to require in time?

5 MR. MOODY: Ten minutes a piece, under an
6 hour.

7 ADMINISTRATIVE LAW JUDGE: Probably cross
8 won't be extensive of them, just based on what we've
9 seen here so far. They tend to have a single point of
10 view, and it's usually quite clear by the time they're
11 done.

12 MR. MOODY: And I'd like to think that it was
13 well-stated as well, Your Honor.

14 MR. MONAHAN: I don't anticipate lengthy cross
15 examinations, however, there's some interesting issues
16 that we would like to get into with a couple of these
17 witnesses.

18 ADMINISTRATIVE LAW JUDGE: Okay. Well, I hate
19 to do this to the Proponents, I've allowed you to be
20 trampled on all three days, but I'm going to do it
21 again. Mr. Christensen, you may step down, and we'll
22 see you in Yakima. And Mr. Moody, you may call your
23 first witness.

24 MR. MOODY: Thank you, Your Honor, and John
25 Annen, please.

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1 ADMINISTRATIVE LAW JUDGE: All right. Let's
2 put the lights back on. Would you state your full name
3 for us and spell your names?

4 MR. ANNEN: John, J-o-h-n, Flavius,
5 F-l-a-v-i-u-s, Annen, A-n-n-e-n.

6 ADMINISTRATIVE LAW JUDGE: And I'd like you to
7 raise your right hand so that I can swear you in.

8 ***

9 [Witness sworn]

10 ***

11 ADMINISTRATIVE LAW JUDGE: Thank you. You'll
12 need to move that microphone closer and scoot your chair
13 a little closer I think. All right. Thank you. Mr.
14 Moody, do you anticipate asking the beginning questions?

15 MR. MOODY: Well, I would defer to Mr. Annen.
16 If he wants to begin with a statement, Mr. Annen, feel
17 free to do so, otherwise, I can just start with
18 questions.

19 ADMINISTRATIVE LAW JUDGE: All right. Then
20 before that, Mr. Annen, if you'll tell us a little bit
21 about where you work, what type of crops you grow, and
22 that sort of thing. Give me some indication for your
23 background with hops, and then we'll either have you
24 make your statement or if you prefer, Mr. Moody can ask
25 you questions.

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1 MR. ANNEN: Okay.

2 ***

3 JOHN F. ANNEN,
4 having first been duly sworn, according to the law,
5 testified as follows:

6 MR. ANNEN: My name is John Annen. I'm a hop
7 grower in Mount Angel, Oregon. I'm a fourth generation
8 grower. We have 400 total acres of farmland, which has
9 260 acres of trellised hops. We currently grow ten
10 different kinds of hops, mostly specialty hops for the
11 Kraft Brewing Industry, as well as some hops for
12 Anheuser-Busch direct. My wife and I own a minority
13 share of Annen Brothers, Incorporated, which I serve as
14 president, day-to-day manager. Annen Brothers
15 Incorporated is also one of the seven partners in Hop
16 Union CBS, and it's where we deliver our craft through
17 Hops Two.

18 I currently serve as the vice-president of Hop
19 Growers America, representing the great State of Oregon.
20 I am the president of the growers' association in
21 Oregon, have been off and on for 12 years, and I'm a
22 commissioner in the State of Oregon.

23 MS. DESKINS: Excuse me, Mr. Annen, I hate to
24 interrupt. Judge Clifton, was he sworn in?

25 MR. MOODY: Yes.

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1 MS. DESKINS: Yes.

2 MR. ANNEN: I said I do.

3 MS. DESKINS: Okay.

4 MR. ANNEN: I will.

5 MS. DESKINS: Okay. We wanted to make sure...

6 MR. ANNEN: I swear.

7 MS. DESKINS: ...of that. There was some
8 concern. Okay. Thank you.

9 ADMINISTRATIVE LAW JUDGE: And you're welcome,
10 and I really do appreciate your helping me with that
11 because if I fail to swear in a witness, then what he
12 has said is not evidence. It's just that important. So
13 I'd rather swear him twice, but I remember that I did.
14 All right, sir, so tell me what you're president of
15 again.

16 MR. ANNEN: The Oregon Hop Growers'
17 Association. I'm also a commissioner on the Oregon Hop
18 Commission.

19 ADMINISTRATIVE LAW JUDGE: How many years have
20 you been working with hops as a grower?

21 MR. ANNEN: Forty-six.

22 ADMINISTRATIVE LAW JUDGE: True?

23 MR. ANNEN: Born there.

24 ADMINISTRATIVE LAW JUDGE: All right. Would
25 you like to say what you have to say and then let Mr.

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1 Moody follow up with questions, or would you like for
2 him to start questioning you from the beginning? It's
3 up to you.

4 MR. ANNEN: Oh, I'll say what I have to say.

5 ADMINISTRATIVE LAW JUDGE: Very fine. You may
6 proceed.

7 MR. ANNEN: I have some concerns about the Hop
8 Marketing Order. I was part of the committee that
9 helped draft all this stuff from the meetings in Oregon
10 at least, and I kind of got -- put my concerns down.
11 Some of these concerns were raised during the meeting,
12 some are after the fact, and I just figured I'd just
13 kind of go through them.

14 991.04. Hops are clearly defined as, excuse
15 me. Hops are clearly defined as different yet will be
16 regulated the same. I don't think anyone in this
17 industry would argue that aroma hops are not the
18 problems and are in balance. Oregon has no super
19 high-alpha hop option at this time, which is a great
20 disadvantage to us.

21 991.08. After -- understanding what I
22 understand today I have no desire to be a handler and
23 did not understand that to be part of this whole thing.
24 Preparation of hops for market no matter by whom should
25 be considered as handled. Yearly budgets are projected

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1 by the spring-strung acreage and production averages.
2 Financial hardships on the organization could result if
3 any given percent of the strung crop is not assessed.
4 Assessments could be somewhat of a deterrent to growing
5 inventory hops. I think it should be strung, count,
6 harvested, assessed, and then assessed.

7 991.25. With the proposed voting structure
8 Washington and Idaho with similar climate and varietal
9 production could pass policy that may adversely affect
10 the production in Oregon, a large aroma-growing region.
11 The demise of the last order was in part due to greed by
12 the growers setting 135 percent saleable. Perhaps the
13 policy of issues setting of the saleable should have
14 voting members with no financial interest in the
15 industry, percentages set purely on industry numbers.

16 991.26. Keep the language in this proposal
17 that was in the old order that said, takes into account
18 programs when they -- when deciding where the research
19 and promotion dollars are spent.

20 991.31. Disposition of funds upon termination
21 should be returned to the grower that paid them, not the
22 handler who merely passed the funds through. Also given
23 the economic climate and the industry, the states may
24 have trouble affording both regional and local programs.
25 Monies collected in the state are currently spent as the

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1 local growers decide, oftentimes on special needs of the
2 state or region, as well as unforeseen emergencies,
3 pests, or diseases. Also, there is no cap on
4 assessments. Perhaps the 1-1/2 percent of crop value as
5 there is in the State of Oregon.

6 991.51. The ability to increase the saleable
7 during the marketing year would effectively keep Oregon
8 out of an emerging market. It takes at least two years
9 to get a crop in Oregon. The only growers that would
10 take advantage would be those with hop stocks or those
11 that could plant and harvest the same year. There is
12 also a risk that setting a higher saleable in any given
13 year would adversely affect the next crop year's
14 saleable. Too many hops in the market if the advisory
15 committee is wrong.

16 991.52. The alpha acid factor does not enter
17 into the aroma hop equation. Aroma hops are sold by the
18 raw hop pound. Setting the saleable according to alpha
19 will severely penalize the grower that produces a higher
20 alpha aroma hop by limiting his production by pounds.
21 In the specialty aroma market often there are only a few
22 growers growing a specific variety for a specific
23 market. As for the -- excuse me. As for the fact that
24 this will only be set one year at a time, this would
25 preclude aroma growers from the long-standing, forward

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1 contracting with Anheuser-Busch, as well as the
2 traditional sold ahead relationships with the major
3 dealers we have worked with in the past. Also, there's
4 the fact of the yearly variations in the alpha acid
5 content.

6 991.53. The proposed representative base period
7 comes after the Oregon growers grub tops [ph] and
8 reflection of market demands and trends. In 1995,
9 Oregon grew 8,641 acres. In 2001, it had dropped to
10 6,103 acres. The flat rate of 10 percent for aroma hops
11 will grossly over-inflate the initial allotment base.
12 This will led to further, more drastic cuts in the
13 overall saleable percentage. This is also unfair to the
14 alpha grower who is going to get based on a real alpha
15 basis.

16 New base to new growers is far too
17 restrictive, one half of 1 percent. In the free market
18 system a new grower can enter if a market can be
19 established. New growers should be welcomed if they can
20 grow hops or market hops differently or more cheaply
21 than the existing ones without the added expense of
22 buying base. Innovations by new growers should not be
23 penalized. Those who can no longer grow profitably
24 should not expect those who can to bail them out as for
25 the proposed minimum economic requirement, an

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1 applicant's ability, area, and other factors. There is
2 such diversity in the states that who will say what the
3 parameters should be. What will work in one area may
4 not work well in another. There is no cookie cutter
5 help branch. Each is as individual as we are.

6 With the inclusion of the reserve pool as a
7 bona fide effort, those with large inventories will be
8 able to market their unneeded production at the expense
9 of the growers who wish to continue to produce.
10 Saleable will be set with those inventories in mind and
11 will have to be lower than it would be otherwise.

12 991.54. Written contracts can exceed a grower
13 allotment. I would propose that contract hops come out
14 of the growers' base allotment. Otherwise this will
15 create a lower saleable percentage through that contract
16 period.

17 991.56. Reserve pool alpha could be grown and
18 stored with no limits, then marketed out in subsequent
19 years under the bona fide effort requirement with the
20 grower no longer taking any growing risks. If
21 inventories must be included in the saleable percentage
22 calculations every year, fresh hops will be further
23 limited.

24 991.78. Should the vote to terminate not be
25 the same as there is to vote it in, either by the number

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1 of people or production, this states that the Secretary
2 can terminate by a super majority. I think that
3 whatever way it is voted in is the way it should be
4 voted out.

5 991.79. Secretary can terminate the
6 continuance review with findings that growers are not in
7 favor of it. There are no set rules on the number of
8 growers or how long they've been growers or if they want
9 to continue to be growers.

10 ADMINISTRATIVE LAW JUDGE: Wow. Mr. Moody.

11 MR. MOODY: Thank you. That was
12 comprehensive.

13 ***

14 BY MR. MOODY:

15 Q. Let me begin by just -- I don't know if
16 you were in the room and heard Mr. Gasseling testify
17 that in his view there was a consensus among the Oregon
18 growers, and I don't mean to -- I hope I'm not
19 misquoting him, but I understood him to say there was a
20 consensus among the Oregon growers as to the need for a
21 marketing order. If you were here, Mr. Annen, do you
22 recall that...

23 A. Yes. I heard Mr. Gasseling's statement.

24 Q. Okay. As president of the Oregon
25 Growers' Association do you have an opinion on that?

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1 A. There is a strong consensus from the
2 growers of Oregon that something needs to be done with
3 this industry. There's a strong consensus of the Oregon
4 growers that the problem mainly lies in Washington with
5 the super alpha hops. There has never been an
6 overwhelming majority of growers in favor of a marketing
7 order in the State of Oregon as proposed.

8 Q. All right. Have the Oregon growers come
9 together in achieving a consensus on the "something"
10 that must be done?

11 A. We -- at the -- on the Growers'
12 Association level we did not have 100 percent either for
13 or against. We have one grower that I personally know
14 who's undecided and two that are for, so we have come to
15 -- not made an official statement.

16 Q. And how many or what percentage of the
17 Oregon growers are against the order as proposed?

18 A. I believe we have 38 numbers, so it would
19 be 35, 34.

20 Q. Okay. So that's one in favor, two
21 unsure. Oh, one or two in favor, one...

22 A. One unsure that I know of for sure.

23 Q. Okay. And then about -- approximately 35
24 opposed.

25 A. Correct.

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1 Q. And would the general opposition reflect
2 generally the points that you have summarized?

3 A. Yeah. I talked with the guys as best I
4 could when I was throwing these notes together, and this
5 is -- these are my personal opinions but influenced by
6 the input from the other growers I chatted with.

7 Q. All right. Just to flush out one of your
8 points, if I understood, what I think you said is that
9 since base is handed out on the pounds of acid, that the
10 growers up in Washington who are growing the super-high
11 alpha acid varieties would get an unfair amount of base
12 compared to the majority of the Oregon growers who are
13 growing aroma hops?

14 A. Yes, sir. In my opinion, as well as the
15 growers in Oregon who grow nugget, that's our only high
16 alpha hop. We have no super alpha hop. Our nuggets'
17 average yield is 21, 2,200 pounds at 13-1/2 percent
18 alpha and a super alpha hop in the State of Washington,
19 as my understanding, can go 3,000 pounds at 16 percent
20 alpha.

21 Q. Okay. So as one of the consequences of
22 that unfairness that in the first years of operation of
23 the order even though aroma hops in Oregon are generally
24 in balance, that the saleable would be cut so low
25 because the base is so high that you might be facing a

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1 situation where you could only market half of your crop?

2 A. Personally on our ranch I did the
3 numbers. Anything, any saleable set lower than 85
4 percent will create us at Annen Brothers Incorporated,
5 will make a situation where we have to buy base.

6 Q. All right. And the people you'd be
7 buying it from would be these high alpha acid growers up
8 in Washington?

9 A. I would assume so. Yes, sir.

10 Q. And did you also understand that once the
11 order got going, that since new base, the 1 percent new
12 base only becomes available when the saleable is going
13 up, that the chances are that in years two and forward
14 there might not be any new base at all for you to share
15 in?

16 A. Yes, sir.

17 Q. So you'd be unable to expand at that
18 point.

19 A. Unless we were to purchase additional
20 base.

21 Q. Now, do you have an opinion on the base,
22 the years to accumulate base are proposed from '97, to
23 '02? You'd pick your highest year from among that
24 production. Do you have an opinion about that provision
25 of the marketing order?

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1 A. Yes, sir. I think that for everybody to
2 pick their best year and any given year within six, will
3 further grossly over-inflate the initial base allotment.

4 Q. All right. Do you think the actual
5 producers in '03, not only the new producers in '03,
6 only, but people who've been prior producers but their
7 '03, production should also be counted in an opportunity
8 to earn base?

9 A. I feel that when, if and when the vote
10 comes, it should be -- the base should be calculated on
11 the last growing, the most recent growing year.

12 Q. Oh, so if there's a marketing order, if
13 USDA were to approve this for a vote, you think that the
14 base year should be only '03?

15 A. Only the last year.

16 Q. All right.

17 A. We have a bit of a unique situation that
18 makes my opinion that way, is that since 1995, we have
19 converted 100 percent of our acreage over to -- we used
20 to be 65 percent alpha, 35 percent aroma. We now have
21 65 -- the only alphas went out, and we've changed
22 everything over into specialty varieties as well as
23 glamet [ph] for Anheuser-Busch.
24 So in Oregon the first year is a baby year. You get
25 absolutely nothing. The next year is depending on

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1 variety between half and three-quarters of a crop, and
2 it's the third year until you finally get going. So any
3 given year for us from '95, '97, to 2002, we had between
4 ten and 50 acres of babies in any given year.

5 Q. All right. You indicated that high,
6 super-high alpha acid varieties in Washington were not
7 available to you in Oregon. Why is that?

8 A. I misspoke. The root stock is available.
9 Two growers in the State of Oregon had planted them.
10 One field was planted for three years, the other for
11 two. Our weather is not conducive to super alpha
12 production. The yields in year one were, of course,
13 nothing. I can speak for personal -- on our own ranch.
14 The yields for year one were nothing. The yield for
15 year two was nothing. We didn't pick it. There wasn't
16 enough there to run through the picker, and year three
17 was three and a half bales.

18 Q. All right. For -- if the order were to
19 go forward, one of the things the Secretary has to do is
20 determine a representative period. I would -- I use the
21 term record date, but in order to figure out who gets to
22 vote, the Secretary has to figure out, you know, what
23 year you grew hops for purposes of getting to vote in
24 the referendum. And I know we haven't heard the
25 Proponents on that yet, but do you have an opinion about

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1 what year producers ought to get to vote?

2 A. In the most recent crop year.

3 Q. Only. Is that correct?

4 A. Only.

5 Q. Okay.

6 ***

7 MR. MOODY: I think that's it for now, Mr.

8 Annen. Thank you very much.

9 MR. ANNEN: Thank you.

10 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

11 Moody. Additional questions from those who are here in
12 a position against the proposal? There are none.

13 Questions for those who are here in favor of
14 the proposal? Mr. Monahan.

15 MR. MONAHAN: Your Honor, I unfortunately was
16 not able to take notes as quickly as Mr. Annen could
17 speak, and I think that a comprehensive and full cross
18 examination is going to require a copy of the notes. If
19 there are indeed notes that you brought with you.

20 MR. ANNEN: I have an outline.

21 MR. MONAHAN: Could -- is there -- could we
22 get a list of that?

23 MR. ANNEN: It's got scribbling on it.

24 MR. MONAHAN: Well, I'll editorialize and say
25 a lot of the points you made, I think, are things that

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1 the Proponent's Committee actually agrees with and are
2 helpful to the process.

3 MR. ANNEN: I know that Steve had been
4 E-mailed a copy of this, and I think Leslie has one.

5 MR. MONAHAN: Is there -- could we take a few
6 minutes and get a copy, Your Honor?

7 ADMINISTRATIVE LAW JUDGE: Let's see first of
8 all if you all have a copy with you.

9 MR. ANNEN: No. This was...

10 ADMINISTRATIVE LAW JUDGE: Nobody does?

11 MR. ANNEN: ...E-mailed a long time ago, Your
12 Honor.

13 ADMINISTRATIVE LAW JUDGE: Oh, okay. All
14 right.

15 MR. MONAHAN: The reason I bring it up, Your
16 Honor, is that one of the frustrating parts is to have
17 to respond to critiques of provisions that we've not had
18 an opportunity to present on yet.

19 MR. ANNEN: Well, is...

20 ADMINISTRATIVE LAW JUDGE: Mr....

21 MR. ANNEN: I took them off of -- excuse me,
22 Your Honor.

23 ADMINISTRATIVE LAW JUDGE: Let me ask you, Mr.
24 Annen, Yakima is about three hours from here.

25 MR. ANNEN: Yes.

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1 ADMINISTRATIVE LAW JUDGE: Is that correct?

2 MR. ANNEN: Yes. From Portland, four from
3 home.

4 ADMINISTRATIVE LAW JUDGE: About four from
5 home? Could you make yourself available on any day next
6 week in Yakima?

7 MR. ANNEN: Wednesday or Thursday.

8 ADMINISTRATIVE LAW JUDGE: That's what I'd
9 really like to do. I was so unable to grasp everything
10 you said that what I'd really like is a transcript of
11 it, actually, but I think if you could make yourself
12 available for cross examination in Yakima, and we could
13 go to the next witness...

14 MR. ANNEN: Okay.

15 ADMINISTRATIVE LAW JUDGE: ...who's here with
16 you today or just here today, that might be the most
17 efficient use of our time.

18 MR. ANNEN: Okay.

19 ADMINISTRATIVE LAW JUDGE: Could you go to the
20 business office here and acquire some photocopies of
21 your notes?

22 MR. ANNEN: Yes, ma'am.

23 ADMINISTRATIVE LAW JUDGE: Could you get six
24 of them made?

25 MR. ANNEN: Yes, ma'am.

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1 ADMINISTRATIVE LAW JUDGE: That would be
2 great.

3 MR. MONAHAN: Your Honor, before we do that, I
4 do have some general questions I would like to ask that
5 I don't think are dependent upon the notes.

6 ADMINISTRATIVE LAW JUDGE: All right. You
7 may.

8 MR. MONAHAN: Thank you, Your Honor.

9 ***

10 BY MR. MONAHAN:

11 Q. Mr. Annen, again, Brendan Monahan for the
12 Proponent's Committee.

13 A. How are you doing?

14 Q. I'm doing fine, thanks. How are you?

15 A. It's easier being back there giggling
16 than up here.

17 Q. I'll see if I can't make you giggle up
18 here. You through one of your legal entities are an
19 owner in Hop Union. Is that right?

20 A. Yes, sir.

21 Q. Would that make Mr. Smith one of your
22 business partners?

23 A. Yes, sir, he is.

24 Q. He described for us the other day the
25 business model employed by Hop Union. Were you here for
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1 his testimony?

2 A. Yes, sir, I was.

3 Q. Did you think he accurately described...

4 A. Yes, sir, he did.

5 Q. ...the manner in which Hop Union conducts
6 its business?

7 A. Yes, sir.

8 Q. The way it actually limits and restricts
9 the amount of hop and hop products that its members or
10 producers may deliver?

11 A. Yes, sir. That we may deliver. Yes.

12 Q. Okay. And are you one of those member
13 producers?

14 A. Yes, sir, we are.

15 Q. Every year -- what varieties do you
16 deliver to Hop Union?

17 A. Several.

18 Q. Can you tell me what those are?

19 A. No, sir.

20 Q. And each year Hop Union tells you how
21 much you can deliver. Is that right?

22 A. Yes. We have an owner meeting and goes
23 through the hop pounds that were sold by variety, and
24 then the sales team gives us an idea of what they
25 anticipate they can sell, and we come up with a number

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1 that the growers can deliver.

2 Q. So the sales team actually goes out and
3 tries to calculate or ascertain demand. Right?

4 A. I would assume so. Yes.

5 Q. And then...

6 A. They come to a number.

7 Q. ...it matches once it determines that
8 demand, then it goes ahead and informs the producers,
9 providers what the supply is going to be. Correct?

10 A. Yes, sir.

11 Q. And that model works well, does it not?

12 A. Fairly well. Yes. So far.

13 Q. Something you've invested your money in
14 and believe in?

15 A. Yes, sir.

16 Q. Okay. You talked about -- if I wrote, if
17 my notes were correct, you indicated that an
18 overwhelming majority of the Oregon hop growers does not
19 support the Hop Marketing Proposal in its present form.
20 Is that accurate?

21 A. Yes, sir.

22 Q. And you obviously went point by point
23 through a lot of provisions that you thought could be
24 improved.

25 A. Yes, sir.

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1 Q. If there were some of these improvements
2 that you identified, do you think that would sway, for
3 example, your support?

4 A. I can only speak for myself.

5 Q. Okay. Would it sway your support, sir?

6 A. Without the volume limitations, yes.

7 Q. Okay. Have you taken -- have you
8 inquired of other growers as to whether there are
9 modifications to some of the items that you brought up
10 that would change their vote?

11 A. I would let them speak for themselves.

12 Q. One of the things you did bring up as a
13 concern was that by giving all aroma hops or rather all
14 hops with less than 10 percent alpha, a presumed 10
15 percent alpha for initial allotment purposes...

16 A. Uh-huh.

17 Q. ...that that would inflate the base.

18 A. I believe it would.

19 Q. And the greatest inflation of base,
20 obviously, would occur for those persons who grow aroma
21 hops.

22 A. Some of them.

23 Q. Well, most of them, would it not? In
24 fact, that's where the inflation would occur.

25 A. In the aroma. Yeah.

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1 Q. Right. And 65 percent of the Oregon hop
2 industry is aroma, is it not?

3 A. I don't have a stat sheet, but I would
4 assume that -- all of that. Yes.

5 Q. I thought I was quoting you, sir.

6 A. That was on our ranch.

7 Q. Okay. That's your ranch. I'm sorry.

8 A. Yes, sir.

9 Q. Okay. The majority of the Oregon
10 -- well, I'll back up. Super alpha hops are not really
11 susceptible to the growing climate and conditions we
12 have in Oregon, are they?

13 A. Super alpha hops have not grown or worked
14 for us on our ranch and one other grower's ranch.

15 Q. It's a fair statement that most of the
16 Oregon market does grow aroma hops.

17 A. Yes.

18 Q. Okay. And so when we talk about this
19 inflation of the allotment base, it is going to occur,
20 if we were to compare between Washington and Oregon,
21 primarily in Oregon or to a greater effect in Oregon.
22 Is that right?

23 A. Uh-huh.

24 Q. And as a result Oregon is more likely to
25 recapture or gain market share as opposed to Washington.

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1 Isn't that right?

2 A. I don't know.

3 Q. Have you ever thought that through?

4 A. No.

5 Q. Is that something Oregon growers would
6 support?

7 A. I have no idea.

8 Q. At any point in time during your
9 stewardship as -- is it president of Oregon Hop
10 Commission? Did I get that right?

11 A. No, sir. President, Oregon Growers'
12 Association.

13 Q. Growers' Association. Did the Growers'
14 Association at any point in the development of this
15 proposal do a straw poll of support?

16 A. Yes, sir.

17 Q. How did that turn out, sir?

18 A. It was almost even, almost split.

19 Q. Are cascades an aroma hop?

20 A. It is my understanding that cascade hop
21 is a dual-purpose hop. Depending on the brewery some
22 classify it aroma, some classify it bitter. Cascade is
23 an almost -- there's very few acres of cascade in the
24 ground in Oregon.

25 Q. Is the supply and demand of cascades

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1 balanced in your opinion?

2 A. I have no opinion on it, because I'm not
3 in the cascade market.

4 Q. Okay. I'll see you Wednesday.

5 A. Okay.

6 ***

7 ADMINISTRATIVE LAW JUDGE: Let me see what
8 other questions people want to ask today. Are there any
9 others from the Proponents that you'd like to ask today?
10 There being none, are there any questions that USDA
11 would like to ask today, understanding that you'll have
12 another opportunity next week?

13 MS. DESKINS: Well, we do want to get some
14 clarification.

15 ***

16 BY MS. DESKINS:

17 Q. Mr. Annen, did you put in proposal number
18 11, which was -- that says delete Sections 991.50
19 through 991.58 from the Hop Marketing Order Proponent's
20 Committee proposal?

21 A. In the letter that was sent before the
22 hearings?

23 Q. Yes.

24 A. Yes.

25 Q. Okay. So you are testifying today here
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1 in support of proposal number 11, which is what I just
2 read?

3 A. Yes.

4 Q. Okay.

5 ***

6 MS. DESKINS: I have no further questions.

7 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.

8 Deskins. Any other questions today from representatives
9 of USDA? No. All right.

10 The notes that you have that you're going to
11 duplicate, will they pretty much be able to be followed
12 do you think?

13 MR. ANNEN: Yes, ma'am.

14 ADMINISTRATIVE LAW JUDGE: All right. That'll
15 be a big help. All right. If he makes six copies of
16 those, well, let me see your hands if you need a copy

17 UNKNOWN SPEAKER: Your Honor, can I ask Steve
18 or Leslie a question real quick? If they -- I just
19 wondered, do you guys have a clean copy? Can you get
20 them E-mailed here? Because this one's all full of...

21 ADMINISTRATIVE LAW JUDGE: Okay.

22 UNKNOWN SPEAKER: ...thank you, Leslie.

23 ADMINISTRATIVE LAW JUDGE: Very good. That's
24 a big help. All right. So Mr. Roy, you're going to
25 E-mail a clean copy to Mr. Smith, and then -- all right.

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1 Great.

2 UNKNOWN SPEAKER: Thank you.

3 ADMINISTRATIVE LAW JUDGE: Okay. Then let's,
4 while you're doing that, we'll go forward then with the
5 next witness. Thank you. You may step down.

6 UNKNOWN SPEAKER: I don't -- Doug has his
7 computer here.

8 MR. MOODY: Your Honor.

9 ADMINISTRATIVE LAW JUDGE: Yes.

10 MR. MOODY: If I could just ask a couple of
11 follow-up questions to Mr. Monahan's questions. They'll
12 be in contiguous in the record.

13 ADMINISTRATIVE LAW JUDGE: All right. You
14 may, Mr. Moody.

15 MR. MOODY: Okay. Thank you. Thank you, Mr.
16 Annen.

17 ***

18 BY MR. MOODY:

19 Q. Mr. Monahan asked you a couple of
20 questions about Hop Union and the business model they
21 follow there. And I think he wants to make an analogy
22 that planning is -- it's good for you, it's good for the
23 whole industry. Would you distinguish just briefly the
24 business model followed at Hop Union from the business
25 model proposed in the Hop Marketing Order?

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1 A. Well, I think that the hop union business
2 model is wholly different than the industry as a whole,
3 because we deal with very, very specific varieties, we
4 grow them for very specific breweries, and it's, you
5 know, we grow what they ask for kind of a thing. It's
6 not just a general grow hops and try to guess the demand
7 kind of thing.

8 Q. Do you have any reason to believe that
9 eight members of the hop administrative committee would
10 be as good at anticipating demand as the business model
11 you follow at Hop Union?

12 A. Again, our model is real structured. I
13 would hate to be one of the eight gentlemen asked to be
14 on that committee. That's like being the almighty, and
15 you can -- we're only human. We can make mistakes, and
16 I think it's very dangerous to have eight people making
17 business decisions for the entire industry.

18 Q. All right. And also one other exception
19 at Hop Union. Whatever it is you decide to grow and
20 whatever varieties you decide to grow and whether you
21 decide to expand or contract, you don't have to go get
22 base from somebody else in order to achieve that
23 business goal.

24 A. No, sir. And in fact, if Hop Union only
25 needs three quarters of our production, there are one

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1 -- I know of one other outlet that may be interested in
2 them, so we may, in fact, not have to contract.

3 Q. Right. Mr. Monahan also asked you
4 questions about inflated base, and he was talking about
5 the 10 percent guaranteed base or 10 percent guaranteed
6 alpha acid factor for whatever your hops happened to be.
7 Isn't the other reason there'd be -- the base,
8 additional base pool would be so unreasonably high or
9 the primary reason it'd be so unreasonably high isn't
10 because of that 10 percent factor. It's because with
11 people allowed to choose their high year from among six,
12 that it's that provision of the marketing order that's
13 going to produce the totally unrealistic base, not the
14 10 percent guaranteed factor?

15 A. Yes, sir.

16 Q. Okay. Mr. Monahan asked you about the
17 straw poll that you took and...

18 A. Yes, sir.

19 Q. ...where people were almost split.

20 A. Yes, sir.

21 Q. What -- that was some time ago?

22 A. That was quite awhile ago.

23 Q. Okay. And since your testimony that
24 approximately 35 of the members or a little over 90
25 percent were opposed, that's a more recent...

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1 A. Yes.

2 Q. ...straw poll?

3 A. Yes, sir.

4 Q. Okay. And that...

5 A. That wasn't a physical straw poll, sir.

6 That was a conversation that all the growers had after a
7 meeting that was held in the first week in August in
8 Salem.

9 Q. Okay. The first week in August...

10 A. Yes, sir.

11 Q. ...'03. Okay. So that...

12 A. Yes, sir.

13 Q. ...represents the current view of your
14 membership.

15 A. Yes, sir.

16 Q. Okay.

17 ***

18 MR. MOODY: Thanks very much, Mr. Annen.

19 ADMINISTRATIVE LAW JUDGE: Any other follow-up
20 questions to what Mr. Monahan asked?

21 Mr. Monahan, any follow up to what Mr. Moody
22 asked?

23 MR. MONAHAN: Just, sir, I apologize when I
24 was asking for the varieties that you deliver to Hop
25 Union. I didn't want to get into your personal affairs

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1 or proprietary information.

2 ***

3 BY MR. MONAHAN:

4 Q. What I meant to ascertain was if they
5 were the type of varieties that in Mr. Smith's pie chart
6 came under the 3 percent of other.

7 A. Yes, sir.

8 Q. They're the minor varieties that are
9 usually dedicated to a particular brewer.

10 A. Yes, sir.

11 Q. And in the event that you do produce more
12 than Hop Union tells you that it can or is inclined to
13 purchase, you often have no other outlet for those
14 specified varieties.

15 A. No, sir. There is one other outlet that
16 I know for sure.

17 Q. Okay. And that can always take up all of
18 your surpluses?

19 A. I don't know. We only planted so far to
20 what we need, so we haven't had an overage yet.

21 ***

22 MR. MONAHAN: Thank you.

23 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
24 Monahan. What days will you be in Yakima, Mr. Annen?

25 MR. ANNEN: I will be there Thursday and

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1 Friday. Wednesday, excuse me, Your Honor. Wednesday,
2 Thursday, and Friday.

3 ADMINISTRATIVE LAW JUDGE: Wednesday,
4 Thursday, and Friday. I really appreciate that. Thank
5 you very much.

6 MR. ANNEN: Thank you.

7 ADMINISTRATIVE LAW JUDGE: You may step down.

8 MR. MONAHAN: Your Honor, could we take a
9 straw poll of the other four growers here and see if
10 perhaps they might make it to Yakima as well?

11 ADMINISTRATIVE LAW JUDGE: All right. If
12 you're one of the other four that would like to testify
13 today, could you come -- I don't know if we can get the
14 microphone on the podium to work, but could you stand at
15 the podium for a minute? We'll see if we can get that
16 mic to work. Would one of you put the button on that's
17 on the top of it?

18 UNKNOWN SPEAKER: Yes, Your Honor.

19 ADMINISTRATIVE LAW JUDGE: Try the one on the
20 podium and see if it works now. They just plugged
21 something in.

22 UNKNOWN SPEAKER: It's working.

23 ADMINISTRATIVE LAW JUDGE: Okay. Good. Would
24 each of you speak your name into the microphone and
25 spell your name for us?

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1 MR. VANDENEYNDE: Peter M. Vandeneynde,
2 P-e-t-e-r, M., Van, V-a-n-d-e-n-e-y-n-d-e.

3 ADMINISTRATIVE LAW JUDGE: And Vandeneynde is
4 all one word?

5 MR. VANDENEYNDE: Yes.

6 ADMINISTRATIVE LAW JUDGE: All right. Thank
7 you. And if each of you would do that in turn, please.

8 MR. BUTSCH: Jeff Butsch, J-e-f-f, J is the
9 middle name, B-u-t-s-c-h.

10 ADMINISTRATIVE LAW JUDGE: Thank you.

11 MR. FOBERT: Paul W. Fobert, P-a-u-l, W.,
12 F-o-b-e-r-t.

13 ADMINISTRATIVE LAW JUDGE: Thank you.

14 MR. KERR: Andrew C. Kerr, A-n-d-r-e-w, C.,
15 K-e-r-r.

16 ADMINISTRATIVE LAW JUDGE: All right. It's
17 about 4:30. I would like to close at 5:00 or as soon
18 thereafter as we can, but I don't want to miss any of
19 your testimony. We plan to be in Yakima, Washington,
20 every day next week, 8:30 to 5:00. Which of you needs
21 to testify today and will not be appearing in Yakima?
22 If you will come to the microphone and state that.

23 MR. KERR: Andrew Kerr. I won't be able to
24 make it to Yakima.

25 ADMINISTRATIVE LAW JUDGE: Thank you.

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1 MR. VANDENEYNDE: Peter Vandeneynde, I will
2 not be able to get to Yakima.

3 ADMINISTRATIVE LAW JUDGE: Thank you.

4 MR. FOBERT: Paul Fobert. I could possibly
5 make it if there's no time today.

6 ADMINISTRATIVE LAW JUDGE: Thank you.

7 MR. BUTSCH: Your Honor, if there's no time
8 today I could probably make it.

9 ADMINISTRATIVE LAW JUDGE: All right. I will
10 attempt to get all four of you in today, but I would
11 like to start with the two that have to testify here or
12 not be heard. So between Mr. Vandeneynde and Mr. Kerr,
13 which one of you would like to go first?

14 All right. Just one moment. I'll get my
15 witness identified. No. I'm sorry. I'm telling the
16 court reporter a moment before he changes the tape.
17 Your name again? Thank you. We'll go off record to
18 change the tape at 4:31.

19 ***

20 [Tape 5 Side 1]

21 ***

22 ADMINISTRATIVE LAW JUDGE: All right. Thank
23 you. We're back on record at 4:32. Mr. Vandeneynde is
24 now seated to my left, and he does have copies. This is
25 excellent. May we keep all these?

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1 MR. VANDENEYNDE: Yes.

2 ADMINISTRATIVE LAW JUDGE: All right. I'm
3 going to have the court reporter mark one of these as
4 Exhibit 23 and take that and a duplicate of it, the
5 duplicate being for the assistance of the typist who
6 transcribes, and then with regard to the remainder,
7 there are enough here for people in the back to have
8 copies, as well as those in the front.

9 Mr. Monahan, would you take care of the people
10 on your side of the room, and Ms. Deskins, would you
11 take care of the people on your side of the room? Thank
12 you. Let's go off record while these are distributed at
13 4:33.

14 ***

15 [Off the record]

16 [On the record]

17 ***

18 ADMINISTRATIVE LAW JUDGE: All right. We're
19 back on record at 4:34. Again, Mr. Vandeneynde, would
20 you state and spell your names and then I'll swear you
21 in.

22 MR. VANDENEYNDE: Yes. Peter M. Vandeneynde,
23 and it's P-e-t-e-r, M., Vandeneynde,
24 V-a-n-d-e-n-e-y-n-d-e.

25 ADMINISTRATIVE LAW JUDGE: Would you raise
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1 your right hand, please?

2 ***

3 [Witness sworn]

4 ***

5 ADMINISTRATIVE LAW JUDGE: Thank you. Before
6 you read your statement into the record would you tell
7 me where you grow hops, what your involvement in the
8 industry is in general, how long you've been involved,
9 that type of information, please?

10 MR. VANDENEYNDE: All right. I am an employee
11 of John I. Haas, Incorporated, and we grow hops in
12 Oregon and Washington. My role with the company is the
13 hop purchasing agent in the State of Oregon, and I don't
14 know if I stated, I've been with the company for 32
15 years.

16 ADMINISTRATIVE LAW JUDGE: And how many of
17 those years have you been involved in purchasing hops?

18 MR. VANDENEYNDE: The entire time.

19 ADMINISTRATIVE LAW JUDGE: Have you ever grown
20 hops?

21 MR. VANDENEYNDE: No, ma'am.

22 ADMINISTRATIVE LAW JUDGE: All right. Is
23 there anything else about your affiliations within
24 Oregon, where you live and work that you could share
25 with us?

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1 MR. VANDENEYNDE: I work in Salem, Oregon, and
2 are at the John I. Haas office. I'm also the dealer
3 representative for the Oregon Hop Commission.

4 ADMINISTRATIVE LAW JUDGE: All right. Thank
5 you. You may read your statement.

6 MR. VANDENEYNDE: All right.

7 ***

8 PETER M. VANDENEYNDE,
9 having first been duly sworn, according to the law,
10 testified as follows:

11 MR. VANDENEYNDE: Our chief executive officer,
12 Henry von Eichel, asked me to serve as a messenger to
13 bring his statement that he authored and posted on the
14 Internet.

15 MS. DESKINS: Your Honor, I hate to interrupt,
16 but what he has there isn't his statement, it's somebody
17 else's statement. Could you ask him to read his? Does
18 he have his own statement today that he's going to read?

19 ADMINISTRATIVE LAW JUDGE: You may answer that
20 question.

21 MR. VANDENEYNDE: No, I do not.

22 MS. DESKINS: Your Honor, since this isn't his
23 statement, I don't know that he needs to read it into
24 the record.

25 ADMINISTRATIVE LAW JUDGE: All right. Do you
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1 think it would be better if we just allow him to submit
2 it as an exhibit?

3 MS. DESKINS: I think so, because it's not his
4 statement. That person's not here. I don't know what
5 else -- I don't know there's any point in reading it.

6 ADMINISTRATIVE LAW JUDGE: All right. Thank
7 you, Ms. Deskins. Would you be able to be cross
8 examined on what your coworker has asked you to deliver
9 to us?

10 MR. VANDENEYNDE: No, ma'am.

11 ADMINISTRATIVE LAW JUDGE: All right. Then it
12 does make sense to receive it as an exhibit, one that
13 has not been subject to cross examination. I've marked
14 that exhibit as 23. I'd now allow anyone who would like
15 to voir dire the witness about the exhibit and the
16 origin of it to do so.

17 MR. MONAHAN: Your Honor, the only comment I'd
18 make is that we deferred our witnesses and have
19 rearranged our schedule for the purpose of hearing from
20 Oregon growers, not the John I. Haas Company, which does
21 have offices in Yakima, I believe.

22 ADMINISTRATIVE LAW JUDGE: All right. Thank
23 you. Your comment is noted, but I will allow us to
24 proceed here. Does anyone else want to ask any more
25 about the statement?

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1 I'd like to -- yes. Mr. Roy.

2 ***

3 BY MR. ROY:

4 Q. Mr. Vandeneynde, you indicated this
5 exhibit was posted on the Internet. Could you explain
6 how it was posted or where it was posted?

7 A. Yes. It was posted on USA Hops web site
8 under the hop net message board, and it was posted on
9 the September 5, 2003.

10 Q. And is that bulletin board open to all
11 people?

12 A. I believe it is.

13 Q. So it's not passworded or anything?

14 A. I don't think so.

15 ***

16 MR. ROY: Thank you.

17 ADMINISTRATIVE LAW JUDGE: All right. And
18 tell me again who the author of the statement is.

19 MR. VANDENEYNDE: The author is Henry von
20 Eichel. He is the chief executive officer of John I.
21 Haas Incorporated.

22 ADMINISTRATIVE LAW JUDGE: All right. And how
23 is his last name spelled?

24 MR. VANDENEYNDE: Last name is v-o-n and
25 E-i-c-h-e-l.

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1 ADMINISTRATIVE LAW JUDGE: And what is your
2 working relationship with him?

3 MR. VANDENEYNDE: I am a subordinate employee.

4 ADMINISTRATIVE LAW JUDGE: All right. Thank
5 you. Mr. Roy.

6 ***

7 BY MR. ROY:

8 Q. Does John I. Haas have any farming
9 operations in Oregon?

10 A. We did. We're in the process of closing
11 a farm.

12 ***

13 MR. ROY: Okay.

14 ADMINISTRATIVE LAW JUDGE: All right. Is
15 there any objection to the admission into evidence of
16 Exhibit 23? There being none, Exhibit 23 is hereby
17 admitted into evidence.

18 Is there anything further that you would like
19 to state for the record?

20 MR. VANDENEYNDE: No, Your Honor.

21 ADMINISTRATIVE LAW JUDGE: All right. Thank
22 you. You may step down. You may keep that copy.

23 Ms. Deskins, thank you for that suggestion.
24 That saved considerable time. Are those extras, Mr.
25 Monahan? Extra copies?

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1 MR. MONAHAN: We have Mr. Annen's notes now,
2 Your Honor.

3 ADMINISTRATIVE LAW JUDGE: Oh, I see. Good.
4 All right. If you'd approach me with those. All right.
5 Good. I'm going to mark Mr. Annen's statement as
6 Exhibit 24. And it -- I'm not going to admit it into
7 evidence at this point. I'm just going to mark it as
8 Exhibit 24, and we'll deal with admitting it into
9 evidence when we get to Yakima, but I'm going to keep
10 the record copy, and I at this time would like to have
11 Government take a copy.

12 MR. ROY: Your Honor.

13 ADMINISTRATIVE LAW JUDGE: Mr. Roy.

14 MR. ROY: If Mr. Annen is here, I would love
15 to have him look at that to make sure it's the right
16 E-mail.

17 ADMINISTRATIVE LAW JUDGE: That wasn't on the
18 record. Mr. Annen, would you come to the microphone,
19 please? Mr. Annen, you remain under oath. Could you
20 identify the document that I've marked as Exhibit 24?

21 MR. ANNEN: Yes, Your Honor. It's the copy of
22 the -- this is an updated copy of the E-mail that I sent
23 to Leslie and to Steve, because in my -- when I had my
24 presentation, I had not said everything that was in it.
25 So this copy, Mike, Mr. Mike Smith helped me change in

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1 the business office, and it is as it was presented.

2 ADMINISTRATIVE LAW JUDGE: All right.

3 Excellent. Now, who still needs a copy? Raise your
4 hand, please.

5 MR. ROY: Your Honor, you can E-mail me or
6 Mike can E-mail it back to me. Thanks.

7 ADMINISTRATIVE LAW JUDGE: All right. That
8 takes care of Proponent's Committee. Who else needs a
9 copy still? These are extra? Okay. Let me have the
10 Government representatives take those. Excellent. I
11 thank you so much, Mr....

12 MR. ANNEN: Thank you, Your Honor.

13 ADMINISTRATIVE LAW JUDGE: ...Annen. We'll
14 see you in Yakima.

15 All right. Then I would -- let me just make a
16 note. What was Exhibit 22? Did I admit that into
17 evidence?

18 UNKNOWN SPEAKER: I hope so, Your Honor.

19 ADMINISTRATIVE LAW JUDGE: I don't think I
20 did. Is there any objection to the admission into
21 evidence of Dr. Kloth's statement, which I marked as
22 Exhibit 22? There being none, Dr. Kloth's statement is
23 hereby admitted into evidence.

24 Mr. Kerr, would you come forward, please?

25 MR. GASSELING: Your Honor, I have one

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1 question. On this statement by Mr. von Eichel, does Mr.
2 Vandeneynde know whether Mr. von Eichel is going to be
3 in Yakima next week and could testify on this document?

4 ADMINISTRATIVE LAW JUDGE: If you'd come to
5 the microphone, please. And for the record that was Mr.
6 Gasseling asking the question. Would you state your
7 name again, please?

8 MR. VANDENEYNDE: Yes. Peter Vandeneynde, and
9 in answer to your question, Mr. Gasseling, I have no
10 idea. I don't -- from talking with him I don't believe
11 he will be.

12 ADMINISTRATIVE LAW JUDGE: All right. Would
13 you invite him? Would you tell him that we'd definitely
14 like to hear from him in person, and we'd like to have
15 participants have the opportunity to ask him questions
16 about his statement if he can make it.

17 MR. VANDENEYNDE: Okay. I'll pass that along.

18 ADMINISTRATIVE LAW JUDGE: Thanks so much.

19 MR. VANDENEYNDE: Thank you, Your Honor.

20 ADMINISTRATIVE LAW JUDGE: You're welcome.

21 UNKNOWN SPEAKER: Your Honor, if we could have
22 Andy Kerr.

23 ADMINISTRATIVE LAW JUDGE: Yes. Mr. Kerr,
24 would you state your full name and spell it for us?

25 MR. KERR: Andrew C. Kerr, A-n-d-r-e-w, C.,
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1 K-e-r-r.

2 ADMINISTRATIVE LAW JUDGE: All right, sir. Is
3 your statement written?

4 MR. KERR: Yes.

5 ADMINISTRATIVE LAW JUDGE: All right. How
6 many copies do you have?

7 MR. KERR: A dozen.

8 ADMINISTRATIVE LAW JUDGE: Oh, bless you. I
9 appreciate it so much. I want to mark that as Exhibit
10 25, and let me take -- would you hand these, Mr. Kerr,
11 to the court reporter? That's the official record copy,
12 and a copy for the typist. Now, with regard to the
13 remaining copies, I'm going to ask, let's see, Mr.
14 Monahan and Ms. Deskins, if you could distribute those.
15 All right. Thank you, Mr. Carswell.

16 Let's go off record while those are
17 distributed.

18 ***

19 [Off the record]

20 [On the record]

21 ***

22 ADMINISTRATIVE LAW JUDGE: All right. We're
23 back on record now at 4:48. Mr. Kerr, I appreciate very
24 much you bringing those copies of your statement. I'd
25 like you to raise your right hand now, and I'll swear

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l you in.

2 ***

3 [Witness sworn]

4

ADMINISTRATIVE LAW JUDGE: Thank you. Now, before you read your statement to us, would you give us background about your connection with the hops industry?

8 MR. KERR: Sure. I'm a fourth generation
9 grower in the Mid Willamette Valley.

10 ADMINISTRATIVE LAW JUDGE: Pull the mic a
11 little closer to you if the Court will allow.

12 MR. KERR: There we go. I'm a fourth
13 generation grower in the Mid Willamette Valley, what
14 would be considered a small operation as far as the hops
15 go, a large operation as far as the general farm is.
16 I'm chair of the Oregon Hop Commission and have been
17 growing hops pretty much all my life.

18 ADMINISTRATIVE LAW JUDGE: How long have you
19 been the chair of the Oregon Hop Commission?

20 MR. KERR: Help. Two terms?

21 ADMINISTRATIVE LAW JUDGE: And how long is
22 each term?

23 MR. KERR: Three -- oh, one year. I'm sorry.
24 So two consecutive terms.

25 ADMINISTRATIVE LAW JUDGE: And were you on
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1 the...

2 MR. KERR: Two years.

3 ADMINISTRATIVE LAW JUDGE: ...commission
4 before you became the chair?

5 MR. KERR: Yes, I was.

6 ADMINISTRATIVE LAW JUDGE: How many prior
7 -- how many years prior to your becoming chair?

8 MR. KERR: Too many. Oh, boy. I'd guess
9 about five.

10 ADMINISTRATIVE LAW JUDGE: Okay. Where do you
11 grow hops?

12 MR. KERR: It would be in the Salem area,
13 Salem, Oregon.

14 ADMINISTRATIVE LAW JUDGE: All right. And is
15 there anything else about your background that would be
16 helpful for us to know?

17 MR. KERR: Nothing I could think of.

18 ADMINISTRATIVE LAW JUDGE: All right. Is
19 there anything that you wanted to add about your
20 statement before you read it?

21 MR. KERR: No.

22 ADMINISTRATIVE LAW JUDGE: All right. You may
23 proceed.

24 ***

25 ANDREW C. KERR,
York Stenographic Services, Inc.
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1 having first been duly sworn, according to the law,
2 testified as follows:

3 MR. KERR: Thank you for giving me the
4 opportunity to voice my displeasure with the idea of
5 implementing a Federal Marketing Order. It is my
6 opinion that the proposed marketing order as it is
7 written cannot be implemented in a way that is fair and
8 equitable to the different states or the different
9 farming operations.

10 Oregon has seen a disproportionate reduction
11 in market share over the years in part due to the
12 development of higher-producing, super-alpha varieties
13 that are not suited to Oregon's growing region. This
14 has left us at a disadvantage in the alpha market.

15 At this time there are few new varieties in
16 development suited to our growing region. A market
17 based on pounds of alpha and not acreage would give a
18 definite advantage to one region over another. This
19 would make it difficult to convert these acres to more
20 competitive, super-high alpha varieties, which would
21 level the playing field without facing hardship of
22 acquiring more base allotment. This would put Oregon at
23 a competitive disadvantage.

24 Every grower has responded to market
25 oversupply and reduced pricing in differing ways. Some

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1 have reduced acreage and diversified into other crops in
2 hopes of returning that acreage to production when the
3 market warrants. Others have grown larger to help
4 spread their fixed costs over larger acreage. No one
5 strategy is better than the other. Reduction in acreage
6 does not mean that that grower is less efficient than
7 one who expanded. A grower who decided to expand is not
8 callus to market signals. Both growers have responded
9 in the way best suited to their operation. This problem
10 -- the problem is that a marketing order works one
11 strategy and penalizes another.

12 In response to an oversupplied, shrinking
13 market, our farm has chosen to reduce our acreage over
14 the years and diversify into other crops. This decrease
15 was done with the idea that we would return to full
16 production once the market had corrected itself and a
17 competitive, super-high alpha variety was developed for
18 our region. Our hop enterprise is at the point that
19 further reduction would make it less than a viable unit.
20 This marketing order would force us to either reduce our
21 acreage further or face financial hardship of acquiring
22 more base allotment. Neither of these options would be
23 fair when combined with our already reduced acreage.

24 Time will correct the overproduction and
25 oversupply we are facing at this time. When this

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1 happens, we hope to be able to grow this enterprise.
2 This can only happen without the restrictions of a
3 marketing order.

4 With this in mind I hope the USDA will see fit
5 not to implement this proposed order.

6 ADMINISTRATIVE LAW JUDGE: Thank you.
7 Anything further before I open the floor to questions?
8 Mr. Kerr, anything further from you...

9 MR. KERR: No.

10 ADMINISTRATIVE LAW JUDGE: ...before -- all
11 right. Mr. Roy.

12 ***

13 BY MR. ROY:

14 Q. Mr. Kerr, if there was ample base around
15 at no price or if it was just ample base around, would
16 it be a financial hardship to you to acquire it?

17 A. Ample base?

18 Q. Yeah.

19 A. Free?

20 Q. Yeah. Ample base.

21 A. I think it would still restrict my
22 growth. I mean, my problem is I reduced half my acreage
23 or almost half of my acreage well before this allotment
24 period we're picking, you know, our average...

25 Q. Uh-huh.

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1 A. ...yield. So it would take quite a bit.
2 If it was free, it probably would not create a hardship.

3 ***

4 MR. ROY: Okay. Thank you.

5 ADMINISTRATIVE LAW JUDGE: Thank you, Mr. Roy.
6 Any other questions by those who are in favor of the
7 amendment or the proposal? All right. Questions by
8 those who are contrary to the proposal. Mr. Moody.

9 MR. MOODY: Yes. Thank you, Mr. Kerr.

10 ***

11 BY MR. MOODY:

12 Q. During the past few years has the market
13 made some adjustments in response to the external
14 changes such as the drop in demand by the brewers and
15 the changes in exchange rates?

16 A. Some. Yes.

17 Q. And do you think the market now is more
18 in balance than it was a few years ago?

19 A. Yes, but not completely in balance.

20 Q. And do you think that the free market
21 forces will continue to move the market toward a more
22 balanced supply and demand position?

23 A. It's inevitable.

24 Q. All right. And are you willing to rely
25 on those forces rather than a Federal marketing order to

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1 achieve a proper balance between supply and demand?

2 A. Yeah. That's what I'd prefer.

3 Q. Okay. And you're primarily an aroma
4 grower?

5 A. No. Actually, I'm primarily an alpha
6 grower.

7 Q. And were you here yesterday when I guess
8 it was Mr. Smith testified there weren't any contracts
9 around? Do you have contracts for your alpha?

10 A. No. I'd prefer not to answer that.

11 Q. Okay. And from your point of view do you
12 see, your marketing situation, do you see a balance in
13 supply and demand?

14 A. Getting fairly close. Yes.

15 Q. Okay. And you on that basis in addition
16 to other bases you've set forth in your statement you
17 oppose instituting a Federal marketing order?

18 A. Yes, I do.

19 Q. And do you see that as if it came into
20 effect it would -- it risks causing more imbalances than
21 solutions?

22 A. In my own personal operation unless I can
23 get Leslie's free base, yes.

24 ***

25 MR. MOODY: All right. Thank you very much,

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1 Mr. Kerr.

2 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
3 Moody. You were referring to Mr. Roy. Is that correct?

4 MR. KERR: Yeah. Sorry.

5 ADMINISTRATIVE LAW JUDGE: Mr. Carswell.

6 MR. CARSWELL: Yes.

7 ***

8 BY MR. CARSWELL:

9 Q. Mr. Kerr, in your statement you referred
10 to some new super, I guess super-high alpha varieties...

11 A. Yeah.

12 Q. ...that are maybe being developed in
13 Oregon. Could you expand on that a little bit?

14 A. Well, there's one promising one that one
15 of the dealers has that is kind of being tried in
16 Oregon, and then there's an ongoing program at the
17 university to also develop super-high alpha varieties.

18 Q. And so at some point in hopefully the
19 near future you would have, you believe, super-high
20 alpha varieties that would grow in Oregon. Is that
21 correct?

22 A. I hope to maintain my competitive edge.
23 Well, not edge but level the playing field.

24 Q. And presuming a Hop Marketing Order in
25 place, substantial cut in the saleable quantity, and

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1 presuming that base costs something, that would put you
2 at a disadvantage in terms of putting in super-high
3 alphas. Is that correct?

4 A. I believe so. Yes.

5 ***

6 MR. CARSWELL: Thank you very much.

7 MR. KERR: Thank you.

8 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
9 Carswell. Any other questions from those who are in a
10 position against the proposal? All right. Any
11 questions from USDA? Dr. Hinman.

12 ***

13 BY DR. HINMAN:

14 Q. Yes. Mr. Kerr, I think you very
15 helpfully answered -- I think you anticipated whether
16 the questions we were religiously asking each grower
17 about the small and large operation, and we appreciate
18 that. I just want to make clear that you were referring
19 to the \$750,000 threshold per grower in total annual
20 sales, and you said you were a, in terms of a just
21 hop-related income, you were below that.

22 A. Correct.

23 Q. And in terms of all farming income from
24 all your agricultural sales of all products you were
25 above that.

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1 A. Correct.

2 Q. Would you be able to -- and I think we've
3 heard previously that there were 38 growers in Oregon,
4 and if so, would you be able to state even in rough
5 figures the same kind of response generally for those 38
6 growers? Could you say a number, a percent, an
7 approximation of how many fit those same two questions
8 that you just answered?

9 A. Wow.

10 Q. Is it's not possible, feel free...

11 A. No.

12 Q. ...to say so.

13 A. Yeah.

14 Q. Okay. Thank you. One other question.

15 You also mentioned, referred to, you know, cost of
16 production, spreading fixed costs over, you know -- is
17 there any kind of cost or production figure for Oregon
18 hops that you could state generally across all
19 varieties, across all, you know, areas of Oregon, or is
20 that just not possible in terms of total cost per acre,
21 average, industry-wide?

22 A. I believe that it would vary from farm to
23 farm, and I don't have that.

24 ***

25 DR. HINMAN: Okay. Thank you very much.

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1 ADMINISTRATIVE LAW JUDGE: Mr. Roy.

2 MR. MONAHAN: Mr. Roy keeps grabbing the
3 microphone from me. Brendan Monahan. I do have some
4 questions when he's through.

5 ADMINISTRATIVE LAW JUDGE: All right.

6 MR. ROY: Sorry, Brendan.

7 ***

8 BY MR. ROY:

9 Q. Mr. Kerr, you stated 38 growers in
10 Oregon.

11 A. I did? No, I didn't.

12 Q. Oh, somebody -- oh, okay. I'm sorry.
13 Mr. Moody. Oh, John Annen. How many -- okay. Let's
14 rephrase this. How many growers as we are defining it
15 through this process as one grower, one vote, what
16 -- how many growers would you say are in Oregon?

17 A. I'm still unclear as to how that...

18 Q. Okay.

19 A. ...is working out, and I wouldn't be able
20 to tell you.

21 Q. If -- what would you think there are
22 given what you understand, the one vote, one grower?

23 A. Oh. You know, I wouldn't venture to
24 guess.

25 Q. How many grower numbers are in Oregon?

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1 A. Thirty-eight, 37, 38.

2 Q. And -- okay. And growers do have
3 multiple...

4 A. Correct.

5 Q. Pardon me?

6 A. I believe so. Yes.

7 ***

8 ADMINISTRATIVE LAW JUDGE: Multiple what?

9 MR. ROY: Grower numbers.

10 ADMINISTRATIVE LAW JUDGE: Oh.

11 ***

12 BY MR. ROY:

13 Q. So you wouldn't have -- you wouldn't know
14 how many, I mean, if you combine them under -- as we
15 defined them with no common banking, you know...

16 A. No. I mean, I only have one so...

17 Q. Okay. All right.

18 A. ...as far as everybody else, I really
19 can't say.

20 Q. But you would think that there's not
21 38...

22 A. I bet it's pretty close. I bet there's
23 very few that are...

24 Q. Yeah.

25 ***

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1 MR. ROY: Thanks.

2 ADMINISTRATIVE LAW JUDGE: Thank you, Mr. Roy.
3 Mr. Monahan.

4 MR. MONAHAN: Thank you, Your Honor.

5 ***

6 BY MR. MONAHAN:

7 Q. Mr. Kerr, I just have some questions to
8 try to fully understand the testimony you did give. We
9 heard from Mr. Annen that there were members of the
10 Oregon grower community who are opposed to the order as
11 written. Would you qualify your position as opposed to
12 the marketing order as written or simply opposed to the
13 concept of a market order at all?

14 A. Somewhere in-between.

15 Q. Okay. I believe some of the
16 modifications that Mr. Annen talked about, if there were
17 some modifications you would -- may be inclined to
18 support a marketing order?

19 A. Probably not.

20 Q. Okay. So in-between but probably just
21 opposed to a marketing order?

22 A. Yeah.

23 Q. Okay.

24 A. There's no way it would work with my
25 unique situation.

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1 Q. In the second paragraph of your
2 statement, you talk about a disproportionate reduction
3 in market share over the years.

4 A. Correct.

5 Q. Okay. What's Oregon's market share now?

6 A. I don't have the exact figures but just
7 what I was trying to allude to was the fact that the
8 higher yielding, super-high alphas up in Washington, you
9 know, acreage has remained somewhat static but Oregon's
10 alpha percentage has dropped, and Washington's has
11 increased.

12 Q. Right. The Washington growers put super
13 alphas in the ground and were able to enjoy higher
14 yields. Is that right?

15 A. Correct.

16 Q. And the Oregon growers put super alphas
17 in the ground, and they didn't grow very well. Is that
18 a fair statement?

19 A. That's probably correct. Yes.

20 Q. Okay. And one of the big reasons is the
21 wet growing climate in the Willamette Valley?

22 A. Correct.

23 Q. And not only by putting the super alphas,
24 not only do you get more ton per acre, but you get a
25 higher alpha per ton.

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1 A. Correct.

2 Q. The last sentence, however, of the second
3 paragraph states that the marketing order would make it
4 difficult to convert acres to more competitive,
5 super-high alpha varieties because you'd have to acquire
6 more base allotment. Do you see that statement there?

7 A. Yes.

8 Q. You couldn't convert to super-high alpha
9 varieties unless you developed a super-high alpha
10 variety.

11 A. Shall I put an if and when in there?

12 Q. Perhaps. Yeah.

13 A. Okay.

14 Q. How long has -- have Oregon growers been
15 trying to develop a super-high alpha?

16 A. I'd guesstimate about five years.

17 Q. Yeah. In fact, they planted -- tried to
18 plant super-high alphas many years before five years.
19 Isn't that right?

20 A. Not that I'm aware of.

21 Q. Okay. Was there a symphony program, CTZ
22 program in Oregon?

23 A. Not that I'm aware of.

24 Q. Not that you're aware of. Okay. Well,
25 what are the super-high alphas that failed?

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1 A. One was, gosh. You know, off the top of
2 my head I can't remember.

3 Q. At this point in time planting super-high
4 alphas in Oregon would be theoretical. That would be a
5 fair way to characterize it?

6 A. Correct.

7 Q. You also stated that now in your opinion
8 that supply and demand appear to be approaching
9 equilibrium.

10 A. With the varieties I have on my farm.

11 Q. Okay. So that the demand for your supply
12 appears to be about right.

13 A. Correct. With my varietal mix.

14 Q. And how many acres have you taken out in
15 the last ten years?

16 A. Oh, roughly 130.

17 Q. Okay. So taking out the acreage has
18 helped you achieve the equality between the supply and
19 demand?

20 A. No. Actually, I think the market
21 conditions have pretty much done that. I doubt my
22 little bit did much to...

23 Q. But, I mean, as the market...

24 A. ...take care of it.

25 Q. ...conditions are what prompted you to

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1 take out the 135 acres?

2 A. Correct.

3 Q. One of the things that you state in your
4 prepared remarks is that growers have grown larger to
5 help spread their fixed costs over larger acreage. Were
6 you here for Mr. Smith's testimony?

7 A. Yeah, I believe I was.

8 Q. Okay. Did you hear the dynamic that he
9 talked about where growers were actually losing money
10 per acre and as a response planted more acres?

11 A. Yes.

12 Q. Is that to -- that's what you're
13 referring to here?

14 A. Not specifically but...

15 Q. That's a phenomena you've witnessed and
16 seen?

17 A. Yes.

18 Q. Have you engaged in that yourself?

19 A. No, I have not.

20 Q. Okay. You've taken the alternate
21 approach, which is to remove acreage?

22 A. Correct.

23 Q. And you -- according to your statement
24 those are really the two options available to growers
25 given economic conditions?

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1 A. Well, I guess there is a third if you
2 want to remain static and...

3 Q. Lose money.

4 A. Yeah. That's one. Or get out
5 altogether. Disregard the spelling errors.

6 Q. I don't want to get into your -- well,
7 you actually did talk about it. You do grow alpha
8 varieties but not varieties that you would characterize
9 as super-high alpha?

10 A. Correct.

11 Q. They'd be varieties that were over 10
12 percent alpha?

13 A. Correct.

14 Q. One of the things that you said as a
15 third option, and I just want to follow up on your
16 testimony, is that the third option is for a grower to
17 get out of the hop business altogether.

18 A. I think that was the fourth. The third
19 would have been to stay static.

20 Q. Okay. I'm sorry. So fourth is to get
21 out altogether.

22 A. Uh-huh.

23 Q. Again, did you hear Mr. Smith's testimony
24 about the market that there is for idle hop ranches or
25 idle -- unused hop machinery and infrastructure?

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1 A. Yes.

2 Q. Would you agree that there is zero market
3 for that?

4 A. Yeah. I would agree with that.

5 ***

6 MR. MONAHAN: That's all I have, Your Honor.

7 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

8 Monahan. Do representatives of USDA have questions for
9 Mr. Kerr? No. You can see either just before lunch or
10 just before the end of the day there isn't a lot of
11 cross examination.

12 MR. KERR: Thank you.

13 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

14 Kerr. You may step down. Is there -- oh, Mr. Moody,
15 did you have something further?

16 MR. MOODY: No, Your Honor. I'm just hoping
17 we can get Jeff Butsch on next.

18 ADMINISTRATIVE LAW JUDGE: All right. First
19 of all, is there any objection to the -- this is on,
20 isn't it? It's quieter than it used to be. Is there
21 any objection to the admission into evidence of Exhibit
22 24? There being none, Exhibit 24 is hereby admitted
23 into evidence.

24 All right. I would rather go with Mr. Fobert,
25 did I say that right? Would you come forward, please?

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1 Test that mic for just a moment with your voice. If
2 you'd just say five, four, three, two, one.

3 MR. FOBERT: Five, four, three, two, one.

4 ADMINISTRATIVE LAW JUDGE: Okay. You're going
5 to need to be closer. Good. Thank you. Would you
6 state and spell your full name for me?

7 MR. FOBERT: Paul W. Fobert, P-a-u-l, W.,
8 F-o-b-e-r-t.

9 ADMINISTRATIVE LAW JUDGE: Thank you. Would
10 you raise your right hand, please?

11 ***

12 [Witness sworn]

13 ***

14 ADMINISTRATIVE LAW JUDGE: Thank you. Please
15 give us a background statement similar to that of the
16 others.

17 MR. FOBERT: About 15 years ago I bought half
18 of my father's farm. He's still farming. He's 84. I'm
19 on the Oregon Hop Commission. I've served at least two
20 terms. I'm currently the vice-chair. I would be
21 considered a small grower totally and just with hops.
22 Basically born and raised a hop grower.

23 ADMINISTRATIVE LAW JUDGE: And where do you
24 farm?

25 MR. FOBERT: Oh. Hubbard, Oregon, in the
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1 Willamette Valley. I have -- on our farm under the old
2 marketing order my father raised 200 acres. That's
3 basically what he had for, I don't know, 30, 40 years.
4 We did not expand any when the old order ceased, and we
5 have reacted to the market, and we have decided to
6 diversify and get into other ventures to remain
7 profitable. So we've chosen to get smaller on our farm.

8 ADMINISTRATIVE LAW JUDGE: And when you say
9 we, are you referring to both you and your father?

10 MR. FOBERT: Yes. Yes. My father still has
11 an interest, although I basically run the farm.

12 ADMINISTRATIVE LAW JUDGE: Now, when you say
13 you bought half the farm, did you buy a one-half
14 interest in the whole farm?

15 MR. FOBERT: One-half. Yes. Yes, I did.

16 ADMINISTRATIVE LAW JUDGE: All right. Very
17 good. Now, you may make your statement. You have no
18 written accompaniment. Is that correct?

19 MR. FOBERT: That's correct.

20 ADMINISTRATIVE LAW JUDGE: All right. You may
21 go ahead, and if you would like Mr. Moody to ask you
22 questions, we may proceed that way, whichever you
23 prefer.

24 MR. FOBERT: I'll just make a statement.

25 ***

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1 PAUL W. FOBERT,
2 having first been duly sworn, according to the law,
3 testified as follows:

4 MR. FOBERT: Basically, I wasn't categorically
5 opposed to marketing orders, but the more I hear I do
6 not want to be a handler in any way, shape, or form. I
7 do not have the money to back up one little mistake on
8 the handling end. No interest in being a handler.
9 There's a bunch of other places I do not agree with, and
10 I don't think small changes would sway my vote in any
11 way.

12 I don't believe under the current world status
13 of -- world market, I don't see how a marketing order
14 only in the United States could possibly -- all it could
15 do is transfer more acreage to Europe and less in the
16 states, the way I see it. The market share thing, I
17 don't know about everyone else, but the market share
18 means nothing to a banker. It's just a term that I
19 could care less about market share. I care about
20 profitability.

21 I don't agree with the statement, put in more
22 acres to lose less money, but that -- I don't agree with
23 that at all. I'm just the opposite. The action that I
24 took, we took some fields out before the '97, period,
25 and I took some more out in '98, and some in '99, and

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1 I'm pretty comfortable with where we're at now, but I
2 don't want to take out any more. We're down around 100
3 acres, and I'd like to stay in the hop business. I
4 think we've done the responsible thing.

5 One other point I'd like to bring up as far as
6 the grower number issue is I've heard there's 38 grower
7 numbers in Oregon. I think there's about 25 growers, so
8 I would really hate to see any kind of a vote on this
9 marketing order based on grower numbers. And if that's
10 the way the vote is going to take place, I'm going to
11 sign up for six or eight more grower numbers.

12 So the Government people, I hope you take note
13 that if you're in charge of how the vote is taken,
14 please don't base it on grower numbers. Count actual
15 heads, entities. I just want to see this fairly -- no
16 hanging Chads.

17 ADMINISTRATIVE LAW JUDGE: Anything further,
18 Mr. Fobert, before I invite questions?

19 MR. FOBERT: Not really. I just wanted to go
20 no record and just state my opinion.

21 ADMINISTRATIVE LAW JUDGE: Well stated. Mr.
22 Moody.

23 MR. MOODY: Yes.

24 ***

25 BY MR. MOODY:

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1 Q. You're primarily an aroma or alpha
2 grower?

3 A. About 60 percent alpha and 40 percent
4 aroma.

5 Q. And do you have contracts for the '03,
6 crop?

7 A. Yes. Not completely on the alpha side
8 but mostly. We had a good crop this year.

9 Q. All right. And is -- do you have any
10 plans as we sit here today to expand or reduce your
11 production in '04, and '05?

12 A. No.

13 Q. You plan to stay about the same?

14 A. I don't want to lose less money. I'm
15 going to stay the same. Yes.

16 Q. All right. And if for purposes of
17 determining the years for base, you know, the proposal
18 is '97, to '02, if the marketing order were to go into
19 effect, what year do you think that -- or years do you
20 think ought to be used to determine the base?

21 A. Well, I'm from the camp that says when
22 there is oversupply, you should reduce acreage. So
23 that's just one of my fundamental problems with the
24 whole marketing order. I mean, taking the highest
25 average as your base is kind of counter-productive in

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1 some ways. I know you have to start somewhere. I just
2 -- I don't agree with that really. We did take some
3 hops out before the '97, period, so we would be affected
4 negatively that way. On my particular farm depends on
5 what saleable percentage would be set. We may or may
6 not have to acquire more base.

7 Q. Assuming the saleable were set at 60
8 percent, would you have to acquire more base?

9 A. Probably not. That's to stay at 111
10 acres. To get back up to 200 where we've been for 40
11 years, yes, I'd have to acquire a lot more base.

12 Q. So in year two or three or four of the
13 marketing order if you wanted to expand, you'd have to
14 go out in your view buy an extra base?

15 A. Yes, I would.

16 Q. All right. Now, for purposes of
17 determining the year of eligibility to vote in the
18 referendum, what -- do you think that only producers in
19 '03, should be allowed to vote if this were to go
20 forward to a referendum?

21 A. Could you clarify that? Do you mean...

22 Q. Well, I mean, that's one of the questions
23 the Department has to determine, if -- and some
24 producers, I guess, have exited the industry at some
25 time before the '03, season. So -- and...

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1 A. I would hate to see them vote if they're
2 no longer a producer.

3 Q. So you think in order to vote you ought
4 to be a producer in '03?

5 A. I would think so.

6 Q. Okay.

7 ***

8 MR. MOODY: Thank you very much.

9 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
10 Moody. Additional questions? Any questions from the
11 Government representatives? USDA. No. Thank you so
12 much. You may step down, Mr. Fobert.

13 MR. FOBERT: Thank you.

14 ADMINISTRATIVE LAW JUDGE: All right. We'll
15 change the tape at 5:17.

16 ***

17 [Tape 5 Side 2]

18 ***

19 ADMINISTRATIVE LAW JUDGE: All right. We're
20 back on record at 5:18. We still have some
21 administrative things to do such as getting the exhibits
22 transferred from the court report to Ms. Dec. I would
23 now discuss with you folks whether you'd like to take
24 one more witness, that being Mr. Butsch, who did
25 indicate that he could probably make it to Yakima.

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1 MR. MOODY: Your Honor, we would like to,
2 given we're on kind of a roll here, I'd like to take Mr.
3 Butsch now, because it would save him at least the
4 three-hour drive up to Yakima.

5 ADMINISTRATIVE LAW JUDGE: And back again.

6 MR. MOODY: Yes.

7 ADMINISTRATIVE LAW JUDGE: All right. So
8 clearly you're in favor of taking his testimony. Do you
9 have any estimate as to how long it would be?

10 MR. MOODY: About ten minutes.

11 ADMINISTRATIVE LAW JUDGE: All right. Does he
12 have a written statement? Wait. Come to the podium.

13 MR. MOODY: Your Honor...

14 ADMINISTRATIVE LAW JUDGE: Come to the podium
15 and talk to me a minute. It could be that we could be
16 taking care of the exhibits while that is being copied,
17 so it's...

18 MR. BUTSCH: That's okay. I got just some
19 scratch notes.

20 ADMINISTRATIVE LAW JUDGE: All right. Do you
21 think they've be useful for people trying to follow what
22 you're saying or not?

23 MR. BUTSCH: Really not.

24 ADMINISTRATIVE LAW JUDGE: All right. And do
25 you agree that your direct testimony, what you have to

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1 say would take only about ten minutes?

2 MR. BUTSCH: Yes, I do, Your Honor.

3 ADMINISTRATIVE LAW JUDGE: All right. Those
4 who are opposed to taking additional testimony before we
5 finish off with our administrative things, please raise
6 your hand.

7 All right. You may take the witness stand.

8 MR. BUTSCH: Thank you.

9 ADMINISTRATIVE LAW JUDGE: Before I swear you
10 in if you'll again state your full name and spell it for
11 me.

12 MR. BUTSCH: My name is Jeff Butsch. I'm an
13 Oregon hop grower. It's spelled J-e-f-f, with J for the
14 middle initial, and B-u-t-s-c-h, please.

15 ADMINISTRATIVE LAW JUDGE: Thank you. And now
16 if you'll raise your right hand, I'll swear you in. And
17 when you answer, you really do have to speak to the mic
18 even though you're trying to look at someone else.

19 ***

20 [Witness sworn]

21 ***

22 ADMINISTRATIVE LAW JUDGE: Thank you. Please
23 give us a background statement as you've heard the
24 others do.

25 MR. BUTSCH: Well, I'm an Oregon hop grower,

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1 and we grow most aroma hops, and I farm with my family,
2 my father, and my sister, and we've been a
3 second-generation hop farm up in O'Heron [ph], Oregon.
4 And I just have a few comments about the Hop Marketing
5 Order.

6 ADMINISTRATIVE LAW JUDGE: You may proceed.

7 ***

8 JEFF J. BUTSCH,
9 having first been duly sworn, according to the law,
10 testified as follows:

11 MR. BUTSCH: I wasn't a grower under the old
12 marketing order, but you know, let's assume for a moment
13 I didn't have -- our farm is broken up. It's 50 percent
14 aroma hop with one major brewery, and the other 50
15 percent with another domestic major brewery. If we
16 didn't have those hops for a market, because I heard,
17 you know, that some of the breweries may not purchase
18 hops if this marketing, proposed marketing order goes
19 through, I'd only have about 31 acres of nuggets, and
20 they're not even all sold this year. So I'd consider
21 that a financial hardship.

22 And so to me Anheuser-Busch and the other
23 domestic breweries that buy aroma hops add quite a bit
24 of stability, and that's what I need as a grower. I
25 grow a premium type of hop, and they try to take care of

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1 their growers, and that's why we're in business. It's a
2 big responsibility to market hops. We try to do that as
3 a family, and so in my closing we want to emphasize that
4 for us we strongly are opposed to this marketing order
5 as it is set up.

6 ADMINISTRATIVE LAW JUDGE: When you say it's a
7 big responsibility to market hops, and that's what you
8 do as a family...

9 MR. BUTSCH: Uh-huh.

10 ADMINISTRATIVE LAW JUDGE: ...are you
11 suggesting that you believe you'll get a better result
12 by doing it that way rather than having it be done in
13 committee?

14 MR. BUTSCH: Yes. We grow other crops, and we
15 believe in the free enterprise system, and we seem to
16 have survived for the two generations that I was talking
17 about. And that's how we, you know, we survive. So I
18 don't see any problem with it. I haven't had to let,
19 you know, eight individuals on a board market our crops
20 since my grandfather let us use the land to farm.

21 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
22 Butsch. Mr. Moody, follow-up questions?

23 ***

24 BY MR. MOODY:

25 Q. Do you have -- if this were to go to a
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1 referendum, do you have an opinion as to whether only
2 the '03, producers should be allowed to vote in that
3 referendum?

4 A. Yes. I think the '03, would be the only
5 year that I would -- if I had to say today were allowed
6 to vote, because I know that in 1997, we took a 53
7 percent cut, and a lot of my neighbors took a cut as
8 well. So I don't see where -- take these six years like
9 the HMO people are suggesting. I think that's a disfair
10 advantage.

11 Q. All right. And for purposes of
12 calculating base, do you think everybody ought to be
13 -- if the order were to go into effect, that everybody
14 ought to just get their production '03, as their base?

15 A. Yes.

16 ***

17 MR. MOODY: All right. Thanks very much.

18 ADMINISTRATIVE LAW JUDGE: Other questions?
19 Mr. Monahan.

20 MR. MONAHAN: Thank you, Your Honor.

21 ***

22 BY MR. MONAHAN:

23 Q. Sir, one of your concerns in -- you heard
24 obviously the testimony that -- because the marketing
25 order, the -- because the proposed marketing order, the

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1 Anheuser-Busch Company is perhaps not going to enter
2 more contracts?

3 A. Yes, I did.

4 Q. That's a concern to you?

5 A. Yes.

6 Q. Is that one of the reasons you're
7 opposing the order?

8 A. Yes.

9 ***

10 MR. MONAHAN: That's all I have, Your Honor.

11 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
12 Monahan. Representatives of USDA. Dr. Hinman.

13 ***

14 BY DR. HINMAN:

15 Q. Yes. Mr. Butsch, I just want to ask the
16 same question I asked the previous core of witnesses
17 about the small versus large. You heard the previous
18 definition, above and below \$750,000...

19 A. Uh-huh.

20 Q. ...total sales of hops and of total
21 crops.

22 A. Uh-huh.

23 Q. Can you characterize your farm in that
24 regard?

25 A. Well, your question's alluding to just
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1 hops or...

2 Q. Well...

3 A. ...the whole farm?

4 Q. ...first of all, do you have -- if you're
5 willing to say, more or less than \$750,000 in hop sales
6 in a recent or typical year. And then total farm sales.

7 A. Well, we'd fit into that small grower
8 category, under 500,000 for hops, but we grow other
9 crops like I had mentioned.

10 Q. Okay.

11 A. So you want to know what else...

12 Q. Just the total -- with the other crops
13 you're over 750,000...

14 A. Right. That's correct.

15 ***

16 DR. HINMAN: Okay. That's all. Thank you
17 very much.

18 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.
19 Hinman. Ms. Finn.

20 ***

21 BY MS. FINN:

22 Q. Hello. Excuse me. What is the process
23 for getting a grower number in Oregon?

24 A. I believe that the other speakers ahead
25 of me today for the Oregon Hop Commission said that

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1 there was an issue through the Oregon Hop Commission.
2 They issue the numbers.

3 Q. Do you have to verify in any way that you
4 are a grower?

5 A. I think it's similar to the evidence is
6 in the production of the hops themselves, and they can't
7 track the hops unless there's a grower number, a variety
8 number, and a lot. Is that what you were asking?

9 Q. Yes. How many growers would you say are
10 in Oregon?

11 A. I think somebody -- I believe there's
12 about 38. Maybe there's less. I'm not sure.

13 Q. Did you hear the other gentleman say he
14 thinks there's only 25?

15 A. Yes.

16 Q. Do you think it's more like 38?

17 A. Probably it's more like 25, because most
18 of the time we have a pretty full meeting at the
19 commission meetings, because I attend all those, and I'd
20 say on a head count basis it's more like 25.

21 ***

22 MS. FINN: All right. Thank you.

23 ADMINISTRATIVE LAW JUDGE: Other questions for
24 Mr. Butsch? There are none. Thank you. You may step
25 down.

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1 MR. ROY: Your Honor.

2 ADMINISTRATIVE LAW JUDGE: Oh. Mr. Roy.

3 MR. ROY: I'm sorry.

4 ***

5 BY MR. ROY:

6 Q. Mr. Butsch, if there was ample base
7 available free of charge, let's say, would that change
8 anything? Would that -- the impact would be very
9 minimal to you?

10 A. Yes. Probably so.

11 ***

12 MR. ROY: Okay. Thanks.

13 ADMINISTRATIVE LAW JUDGE: Thank you. You may
14 step down. All right. Is there any further evidence to
15 present today? There is none. I'd like now to handle
16 the transfer of the exhibits from the court reporter to
17 Ms. Dec.

18 MR. MONAHAN: Your Honor, if I may. Brendan
19 Monahan for the Proponent's Committee. The Proponents
20 have obviously no more evidence or testimony to submit
21 today. As I gather may be the norm in these types of
22 proceedings, some important caucuses in the hallways
23 have resulted in some proposed amendments to the
24 verbiage in the order itself, specifically comments from
25 persons assembled regarding modification of the

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1 definition of handler and what constitutes handling. Is
2 that something that, Your Honor, the Department would
3 like us to bring up on Monday, or I could even read them
4 right now.

5 ADMINISTRATIVE LAW JUDGE: I think you should
6 to give everybody a heads up so they can think about it,
7 and then I'll have you do it again...

8 MR. MONAHAN: Thank you, Your Honor.

9 ADMINISTRATIVE LAW JUDGE: ...Monday.

10 MR. MONAHAN: Okay. For further, purposes of
11 further clarification and to give a better idea of the
12 intent of the Proponent's Committee, the term, handling,
13 is intended to include delivery on contract for sale,
14 delivery on consignment, and conversion from raw hops to
15 processed form.

16 And if -- I realize this is late in the day
17 and probably brings up a whole host of questions, and
18 what we would be happy to do is present a witness first
19 thing Monday to address these provisions.

20 ADMINISTRATIVE LAW JUDGE: All right. I'm
21 very glad you did bring that up now. Thank you.

22 MR. MONAHAN: You're welcome.

23 ADMINISTRATIVE LAW JUDGE: Anyone ask for any
24 clarification on that? Would you repeat it, Mr.
25 Monahan? Now, Mr. Monahan, I'm looking at the

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1 definitions, and I presume this would go into Section
2 991.08, which says handle, it's the definition of
3 handle.

4 MR. MONAHAN: That's correct, Your Honor.

5 ADMINISTRATIVE LAW JUDGE: All right.

6 MR. MONAHAN: One moment. I'm going to let
7 Mr. Carpenter reiterate these just in case there is a
8 follow-up question.

9 ADMINISTRATIVE LAW JUDGE: All right.

10 MR. ROY: Okay.

11 ADMINISTRATIVE LAW JUDGE: It turns out it
12 will be Mr. Roy rather than Mr. Carpenter. Mr. Roy,
13 you're not a witness at this point. Is that correct? I
14 better swear you in in case there are questions.

15 MR. ROY: Okay.

16 ADMINISTRATIVE LAW JUDGE: State your full
17 name for me.

18 MR. ROY: Leslie Alan Roy, L-e-s-l-i-e,
19 A-l-a-n, and then R-o-y.

20 ADMINISTRATIVE LAW JUDGE: All right. Would
21 you raise your right hand, please.

22 ***

23 [Witness sworn]

24 ***

25 ADMINISTRATIVE LAW JUDGE: Thank you.

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1 ***

2 LESLIE A. ROY,
3 having first been duly sworn, according to the law,
4 testified as follows:

5 MR. ROY: If you could indulge me for a minute
6 as I get the correct -- make sure. I want to make sure
7 this is inserted in the proper place.

8 Okay. Under Section 991.08, handle. Okay.
9 Currently it says, "Handle means to prepare hops for
10 market, acquire hops from a producer, use hops
11 commercially at one's own production, sell, transport,
12 or ship, accept as common on contract carrier of hops
13 owned." We would like to also insert into that, to
14 handle also means to convert from raw hops...

15 ADMINISTRATIVE LAW JUDGE: Wait, wait, wait,
16 wait. After the word owned...

17 MR. ROY: Okay.

18 ADMINISTRATIVE LAW JUDGE: ...does it say by
19 another and then close parentheses?

20 MR. ROY: Okay. After -- okay. Acquire hops
21 from a producer, insert conversion or conversion from
22 raw hops to processed form, use hops commercially.

23 ADMINISTRATIVE LAW JUDGE: Could you -- I know
24 you have to do this on the fly but...

25 MR. ROY: Yeah.

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1 ADMINISTRATIVE LAW JUDGE: ...could you read
2 the whole section as you now propose it?

3 MR. ROY: Okay. Section 991.08, handle.
4 "Handle means to prepare hops for market, acquire hops
5 from a producer, convert from raw hops to processed
6 form, use hops commercially at one's own production,
7 sell, transport, or ship, accept as common or contract
8 carrier of hops owned." I could go on to the rest of it
9 but...

10 ADMINISTRATIVE LAW JUDGE: Okay. By another,
11 end parentheses.

12 MR. ROY: You know, yes. You know, if I may
13 indulge the Court here, I think it would probably be
14 more appropriate, I didn't see the second page here, and
15 I apologize. It was handed to me very quickly. I would
16 insert -- put this, convert from raw hops to processed
17 form, as D, Sub-Section D on that last page. I
18 apologize.

19 MS. DESKINS: Judge Clifton, maybe what the
20 Proponents want to do is come in on Monday with
21 something typed out with how the language they wanted,
22 because that way I think would help them and us to see
23 it rather than to try to insert things.

24 MR. MONAHAN: Your Honor, this is Brendan
25 Monahan. That was our intent. I just wanted to not

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1 blindsided everybody on Monday and try to give notice of
2 the three items. And I'd be happy to read them again so
3 that your notes are accurate.

4 The three revisions, and Your Honor, at this
5 point in time I don't think we're prepared to make
6 line-by-line verbiage amendments, but the three concepts
7 that we need to include in the amended definition would
8 be that the handling includes delivery on contract for
9 sale, delivery on consignment, and conversion from raw
10 hops to processed form. Those three things would
11 constitute handling, Your Honor, and we'd be happy to
12 submit a revised Section 991.08.

13 ADMINISTRATIVE LAW JUDGE: And what you mean
14 by processed form would not include baling, but it would
15 include pelletizing?

16 MR. MONAHAN: Yes, Your Honor.

17 ADMINISTRATIVE LAW JUDGE: Is that the idea?
18 Okay.

19 MR. MONAHAN: Pellets, extract, you name it.

20 ADMINISTRATIVE LAW JUDGE: All right. I would
21 -- this is not, again, an evidentiary matter, but this
22 is -- one of the things that the Proponent's Committee
23 envisioned through the process of these hearings was a
24 process of, you know, good faith communication and give
25 and take. These proposals are the result of helpful

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1 comments that were made by members of the industry who
2 apparently either did not have the opportunity or just
3 unable to contribute to the process as it was being
4 developed. And I know that the people left in this
5 room, including the lawyers, know how to get ahold of us
6 over the weekend. I would encourage any member in the
7 audience to grab ahold of a member of the committee with
8 any recommendations, and Mr. Moody, Mr. Carswell, I'd be
9 happy to chat with you if you had any ideas about change
10 to verbiage that would clear things up or make things
11 more workable.

12 ADMINISTRATIVE LAW JUDGE: All right. Thank
13 you. Mr. Carswell.

14 MR. CARSWELL: I just wanted to comment on
15 this, if it's okay, because Brendan earlier indicated
16 that, you know, some frustration about the time that's
17 been spent on cross examination. But I think a lot of
18 that time has been spent in terms of valid issues being
19 raised with respect to the drafting of the proposals.
20 And you know, I appreciate, Brendan, that you welcome
21 our input, but you know, as the party who's opposed to
22 the order, I, you know, I frankly have no interest on,
23 you know, don't mean to be rude, but I have no interest
24 in fixing the flaws that are in the order, and I think
25 that if the order had been drafted in the proper way,

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1 there wouldn't have been a lot of the time that has been
2 necessary to point those issues out that we're kind of
3 being charged with.

4 And I just wanted to make that comment. I
5 hope it's appropriate.

6 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
7 Carswell. You need not respond, Mr. Monahan.

8 MR. MONAHAN: I was just going to say that I
9 won't expect a phone call.

10 ADMINISTRATIVE LAW JUDGE: All right. I'd
11 like to the court reporter to gather up the record copy
12 of the exhibits and to hand those to Ms. Dec, and then
13 I'm going to see if what she's got agrees with my list
14 of what's been admitted.

15 The first ten that I show as having been
16 admitted are 1 through 10.

17 MS. DEC: I have 1 through 10.

18 ADMINISTRATIVE LAW JUDGE: All right. And the
19 next one I show as being admitted is 16, which is a
20 Dasell [ph] chart. What are you thumbing through there?
21 Do you have 11, 12, 13, 14?

22 MS. DEC: Yes, I do.

23 ADMINISTRATIVE LAW JUDGE: I think those were
24 provided, but we've not yet dealt with them. So it
25 doesn't hurt if you have extras.

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1 MS. DEC: Okay.

2 ADMINISTRATIVE LAW JUDGE: Okay.

3 MS. DEC: I'm with you.

4 ADMINISTRATIVE LAW JUDGE: Now I think you
5 should have 16 through 24 admitted.

6 MS. DEC: I do not have 24. I believe that
7 was the statement that was marked that Mr. Annen gave.

8 ADMINISTRATIVE LAW JUDGE: Mr. Kerr.

9 MS. DEC: I have that as Exhibit 25.

10 ADMINISTRATIVE LAW JUDGE: Oh. You're right.
11 Let's see. What -- you have 25 there?

12 MS. DEC: Yes, ma'am.

13 ADMINISTRATIVE LAW JUDGE: Okay. And that's
14 the Kerr statement?

15 MS. DEC: Yes.

16 ADMINISTRATIVE LAW JUDGE: Okay.

17 MS. RAZICK: Your Honor, if I may interrupt.

18 ADMINISTRATIVE LAW JUDGE: Yes.

19 MS. RAZICK: You admitted Exhibit 24 right
20 after Andrew Kerr's testimony was over, but it's been
21 marked as Government's Exhibit 25.

22 ADMINISTRATIVE LAW JUDGE: Oh. Thank you.

23 MS. RAZICK: So we did admit 24, thinking it
24 was 25.

25 ADMINISTRATIVE LAW JUDGE: All right. Is

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1 there any objection to the admission into evidence of
2 Exhibit 25? There being none, Exhibit 25 is hereby
3 admitted.

4 Now, do you have any copy of 24?

5 MS. DEC: Yes, I do.

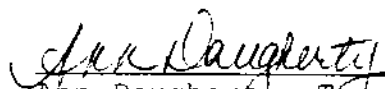
6 ADMINISTRATIVE LAW JUDGE: Okay. Very good.

7 And so what I admitted into evidence was 24, even though
8 I was -- I meant to work on 25. Now they're both in.
9 All right. Good.

10 Is there anything further before we adjourn?
11 It's 5:42, and I'll see you in Yakima, Washington at
12 8:30 in the morning Monday. Thank you.

1
2 CERTIFICATE OF REPORTER, TRANSCRIBER AND PROOFREADER
34
5 IN RE: HOPS PRODUCED IN WASHINGTON, OREGON,
6 IDAHO, AND CALIFORNIA
78 HELD AT: PORTLAND, OREGON
910 DATE: OCTOBER 17, 2003
1112 We, the undersigned, do hereby certify that the
13 foregoing pages, numbered 530 through 824, inclusive,
14 are the true, accurate and complete transcript prepared
15 from the reporting by the reporter in attendance at the
16 above identified hearing, in accordance with applicable
17 provisions of the current USDA contract, and have
18 verified the accuracy of the transcript by (1) comparing
19 the typewritten transcript against the reporting or
20 recording accomplished at the hearings, and (2)
21 comparing the final proofed typewritten transcript
22 against the reporting or recording accomplished at the
23 hearing.
24


25 Date:

26 
27 Ann Daugherty, Transcriber
28 York Stenographic Services, Inc.
29

30 Date:

31 
32 Sarah Mowrer, Proofreader
33 York Stenographic Services, Inc.
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35 Date:

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37 Mark Frethem, Reporter
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